DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 11-713
Vide 11-714, 11-715
Title: Rick Perry, Governor of Texas, et al., Appellants
v.
Shannon Perez, et al.
Docketed: December 12, 2011
Linked with 11A520
Lower Ct: United States District Court for the Western District of Texas
Case Nos.: (5:11-cv-360)
Decision Date: November 23, 2011

Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Nov 28 2011	Application (11A520) for a stay pending appeal, submitted to Justice Scalia.
Nov 28 2011	Response to application (11A520) requested by Justice Scalia, due Thursday, December 1, 2011, by 4 p.m. EST.
Dec 1 2011	Response to application from respondent The Texas Democratic Pary, et al. filed. VIDED.
Dec 1 2011	Response to application from respondent Mexican American Legislative Caucus, et al. filed.
Dec 1 2011	Response to application from respondent Texas Latino Redistricting Task Force filed.
Dec 2 2011	Reply of applicant Rick Perry, Governor of Texas, et al. filed. VIDED.
Dec 9 2011	Application (11A520) referred to the Court.
Dec 9 2011	Application (11A520) granted by the Court. The applications (11A520, 11A521, and 11A536) for stay presented to Justice Scalia and by him referred to the Court are granted, and it is ordered that the orders issued by the United States District Court for the Western District of Texas on November 23, 2011, in case Nos. 5:11-CV-360, and 5:11-CV-788, and the order of November 26, 2011, in case No. 5:11-CV-360, are hereby stayed pending further order of the Court. In addition, the applications for stay are treated as jurisdictional statements, and in each case probable jurisdiction is noted. The cases are consolidated and a total of one hour is allotted for oral argument. The briefs of appellants and appellees, not to exceed 15,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Wednesday, December 21, 2011. Reply briefs, not to exceed 15,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Tuesday, January 3, 2012. The cases are set for oral argument on Monday, January 9, 2012, at 1 p.m.
Dec 9 2011	Statement as to jurisdiction filed.

Dec 9 2011 PROBABLE JURISDICTION NOTED.

Dec 9 2011 SET FOR ARGUMENT ON Monday, January 9, 2012. VIDED

Dec 12 2011 Briefs of amicus curiae are to be submitted in compliance with Rule 37.3. VIDED

Dec 16 2011 Record from U.S.D.C. for Western District of Texas is electronic.

Dec 16 2011 Motion for divided argument filed by appellees Wendy Davis, et al. VIDED.

Dec 19 2011 Consent to the filing of amicus curiae briefs in support of either party received from counsel for Wendy Davis, et al. VIDED

Dec 19 2011 Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for Texas State Conference of the NAACP, et al. VIDED

Dec 19 2011 Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for the Texas Latino Redistricting Task Force, et al. VIDED

Dec 19 2011 Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for Rodriguez, et al. VIDED

Dec 20 2011 Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for the Texas Democratic Party, et al. VIDED

Dec 20 2011 Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for appellants Perry, et al. VIDED

Dec 21 2011 Brief of appellees Texas Latino Redistricting Task Force, et al. filed. VIDED. (Distributed)

Dec 21 2011 Brief of appellees Eddie Rodriguez, et al. filed. VIDED. (Distributed)

Dec 21 2011 Brief of appellees Wendy Davis, et al. filed. VIDED. (Distributed)

Dec 21 2011 Brief of appellees Texas State Conference of the NAACP, et al. filed. VIDED. (Distributed)

Dec 21 2011 Brief of appellants Rick Perry, Governor of Texas, et al. filed. VIDED. (Distributed)

Dec 21 2011 Joint appendix filed (5 volumes). VIDED. (Distributed) (Statement of costs filed)

Dec 22 2011 Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the Congresspeople. VIDED

Dec 28 2011 Brief amicus curiae of Congressman Canseco filed. VIDED. (Distributed)

Dec 28 2011 Brief amicus curiae of the United States supporting affirmance in part and vacatur in part filed. VIDED. (Distributed)

Dec 28 2011 Brief amici curiae of Alabama, et al. filed. VIDED. (Distributed)

Dec 28 2011 Brief amicus curiae of Edward Chen and the Project on Fair Representation filed. VIDED. (Distributed)

Dec 28 2011 Brief amicus curiae of Cato Institute filed. VIDED. (Distributed)

Dec 28 2011 Brief amicus curiae of Eagle Forum Education & Legal Defense Fund, Inc. filed. VIDED. (Distributed)

Dec 29 2011 Motion for enlargement of time for oral argument, for leave to participate in oral argument as amicus curiae, and for divided argument filed by the Solicitor General. VIDED.

Dec 30 2011 Motion for enlargement of time for oral argument, for leave to participate in oral argument as amicus curiae, and for divided argument GRANTED. The time is to be divided as follows: 30 minutes for the appellants, 30 minutes for the appellees, and 10 minutes for the Solicitor General as amicus curiae. VIDED.

Dec 30 2011 Motion for divided argument filed by appellees Wendy Davis, et al. DENIED. VIDED.

Jan 3 2012 Reply of appellees Texas Latino Redistricting Task Force, et al. filed. VIDED.

	(Distributed)
Jan 3 2012	Reply of appellees Texas State Conference of the NAACP, et al. filed. VIDED. (Distributed)
Jan 3 2012	Reply of appellees Eddie Rodriguez, et al. filed. VIDED. (Distributed)
Jan 3 2012	Reply of appellees Wendy Davis, et al. filed. VIDED. (Distributed)
Jan 3 2012	Reply of appellants Rick Perry, Governor of Texas, et al. filed. VIDED. (Distributed)
Jan 3 2012	Supplemental joint appendix (1 vol.) filed. VIDED. (Distributed)
Jan 9 2012	Argued. For appellants: Paul D. Clement, Washington, D. C. For United States, as amicus curiae: Sri Srinivasan, Principal Deputy Solicitor General, Department of Justice, Washington, D. C. For appellees: Jose Garza, San Antonio, Tex.
Jan 20 2012	Judgment VACATED and case REMANDED Thomas, J., filed an opinion concurring in the judgment. Opinion per curiam.
Jan 20 2012	Opinion of Court ordering judgment to issue forthwith.
Jan 20 2012	JUDGMENT ISSUED forthwith.

JOINT APPENDIX

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.

On Appeal from the United States District Court for the Western District of Texas

JOINT APPENDIX, Vol. 1 of 5

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11-713, 11-714, 11-715, Appeal Docketed December 12, 2011
11-713, 11-714, 11-715, Probable Jurisdiction Noted December 9, 2011

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UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (San Antonio)

Civil Docket for Case
#5:11-cv-00360-OLG-JES-XR

PEREZ, et al.* v. *PERRY, et al.

Date Filed	#	Docket Text
05/09/2011	1	COMPLAINT (Filing fee $350 receipt number 0542–3609997). No Summons requested at this time, filed by Harold Dutton, Jr, Shannon Perez. (Attachments: #1 Civil Cover Sheet) (Richards, David) (Entered: 05/09/2011)
* * *		
05/11/2011	4	ORDER Constituting Three–Judge Court to Judge Orlando L. Garcia, Judge Jerry E. Smith and Judge Xavier Rodriguez. Signed by Judge Edith H. Jones. (ga) (Entered: 05/11/2011)
05/31/2011	5	AMENDED COMPLAINT against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending 1 Complaint., filed by Harold Dutton, Jr, Shannon Perez, Gregory Tamez. (Richards, David) (Entered: 05/31/2011)

06/07/2011	6	AMENDED COMPLAINT Second against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending 1 Complaint, 5 Amended Complaint., filed by Harold Dutton, Jr, Gregory Tamez, Shannon Perez. (Richards, David) (Entered: 06/07/2011)
		* * *
06/14/2011	9	MOTION to Dismiss for Lack of Jurisdiction, MOTION to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 06/14/2011)
		* * *
06/24/2011	18	RESPONSE to Motion, filed by Harold Dutton, Jr, Shannon Perez, Gregory Tamez, re 9 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry,

		Defendant David Dewhurst (Attachments: #1 Exhibit A #2 Proposed Order) (Richards, David) (Entered: 06/24/2011)
		* * *
07/01/2011	20	MOTION to Dismiss Plaintiffs' Second Amended Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed Order Proposed Order) (Schenck, David) (Entered: 07/01/2011)
		* * *
07/06/2011	22	ORDER DENYING as moot 9 Motion to Dismiss for Lack of Jurisdiction; DENYING as moot 9 Motion to Dismiss. Signed by Judge Orlando L. Garcia. (rf) (Entered: 07/06/2011)
07/06/2011	23	ORDER OF CONSOLIDATION – consolidating this case with SA11–CV–361 and SA11–CV–490. Signed by Judge Orlando L. Garcia. (rf) (Entered: 07/06/2011)
		* * *
07/11/2011	26	Response in Opposition to Motion, filed by Harold Dutton, Jr, Shannon Perez, Gregory Tamez, re 20 MOTION to Dismiss Plaintiffs' Second

		Amended Complaint filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst Plaintiffs' Response to Motion to Dismiss Plaintiffs' Second Amended Complaint (Richards, David) (Entered: 07/11/2011)
		* * *
07/13/2011	37	NOTICE of Initial Disclosures by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus (Schenck, David) (Entered: 07/13/2011)
07/13/2011	38	NOTICE of Initial Disclosures by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus (Schenck, David) (Entered: 07/13/2011)
07/14/2011	39	MOTION to Dismiss Defendant's 12(b)(1) and 12(b)6 Motion to Dismiss Plaintiffs' First Amended Complaint by Rick Perry. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 07/14/2011)
		* * *
7/18/2011	49	RESPONSE to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 45

		MOTION to Extend Scheduling Order Deadlines regarding filing of expert reports filed by Consol Plaintiff Mexican American Legislative Caucus, Texas House of Representatives, 41 MOTION to Extend Scheduling Order Deadlines filed by Consol Plaintiff Joey Cardenas, Consol Plaintiff Jose Olivares, Consol Plaintiff Tomacita Olivares, Consol Plaintiff Emelda Menendez, Consol Plaintiff Texas Latino Redistricting Task Force, Consol Plaintiff Alejandro Ortiz, Consol Plaintiff Alex Jimenez, Consol Plaintiff Rebecca Ortiz (Schenck, David) (Entered: 07/18/2011)
07/19/2011	50	AMENDED COMPLAINT Plaintiff MALC's Second Amended Complaint against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending, filed by Mexican American Legislative Caucus, Texas House of Representatives. (Garza, Jose) (Entered: 07/19/2011)
		* * *
07/19/2011	52	Unopposed MOTION for Leave to File Plaintiffs' Third

		Amended Complaint by Harold Dutton, Jr, Shannon Perez, Gregory Tamez. (Attachments: #1 Proposed Order) (Richards, David) (Entered: 07/19/2011)
07/19/2011	53	AMENDED COMPLAINT against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending, filed by Gregory Tamez, Harold Dutton, Jr, Shannon Perez, Nancy Hall, Dorothy DeBose, Carmen Rodriguez, Sergio Salinas, Rudolfo Ortiz. (Richards, David) (Entered: 07/19/2011)
		* * *
07/19/2011	55	CROSSCLAIM against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, filed by Texas Democratic Party. (Dunn, Chad) (Entered: 07/19/2011)
		* * *
07/21/2011	63	ORDER of Consolidation – consolidating this case with SA-11-CA-361, SA-11-CA-490 and SA-11-CA-592. Signed by Judge Orlando L. Garcia. (ga) (Entered: 07/22/2011)
		* * *
07/25/2011	67	ORDER DENYING 39 Motion

		to Dismiss; DENYING 41 Motion to Extend Scheduling Order Deadlines; GRANTING 52 Motion for Leave to File; DENYING 56 Motion; GRANTING 58 Motion to Appear Pro Hac Vice. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order.; GRANTING 59 Motion to Amend Complaint; GRANTING 60 Motion to Intervene; GRANTING 61 Motion to Intervene; GRANTING 64 Motion to Intervene; DENYING 20 Motion to Dismiss Signed by Judge Orlando L. Garcia; GRANTING 57 Motion to Appear Pro Hac Vice. (rf) Modified on 7/26/2011, to edit text to reflect doc #57 was ruled on (rf). (Entered: 07/26/2011)
07/25/2011	68	SECOND AMENDED COMPLAINT against Hope Andrade, Rick Perry filed by Texas Latino Redistricting Task Force, Alex Jimenez, Emelda Menendez, Tomacita Olivares, Alejandro Ortiz, Joey Cardenas,

		Rebecca Ortiz, Jose Olivares, Armando Cortez, Socorro Ramos, Gregorio Benito Palomino, Florinda Chavez, Cynthia Valadez, Cesar Eduardo Yevenes, Sergio Coronado, Gilberto Torres, Renato De Los Santos. (tm) (Entered: 07/26/2011)
07/25/2011	69	PLAINTIFF–INTERVENORS' AMENDED COMPLAINT against Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus amending, filed by Bill Lawson, Juanita Wallace, Texas State Conference of NAACP Branches, Howard Jefferson. (tm) (Entered: 07/26/2011)
07/25/2011	70	Intervenor COMPLAINT, filed by Texas Legislative Black Caucus against State of Texas, Rick Perry, David Dewhurst, Joe Strauss, Hope Andrade. (tm) (Entered: 07/26/2011)
07/25/2011	71	Intervenor COMPLAINT, filed by Alexander Green, Sheila Jackson–Lee, Eddie Bernice Johnson against State of Texas, Rick Perry, David Dewhurst, Joe Strauss, Hope Andrade. (tm) (Entered: 07/26/2011)
07/26/2011	72	CONSOLIDATION AND

		SCHEDULING ORDER: Member case SA-11-CV-615 consolidated with LEAD CASE SA-11-CA-360. For parties in Morris claim only deadline for Rule 26(f) conference is 7/29/11 and deadline for initial disclosures and motions to amend or supplement pleadings or join additional parties is 8/1/11. All other deadlines in the current scheduling order 51, 66 shall govern. Signed by Judge Orlando L. Garcia. (tm) (Entered: 07/27/2011)
		* * *
07/27/2011	75	State Defendants' ANSWER to Complaint by LULAC Plaintiff-Intervenor by David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) Modified on 7/28/2011, to correct filers (rf). (Entered: 07/27/2011)
07/27/2011	76	CONSOLIDATION AND SCHEDULING ORDER - consolidating this case with SA-11-CA-635 (Amended Pleadings and Joinder of Parties due by 8/1/2011, Discovery due by 8/17/2011, Dispositive Motions due by 8/17/2011, Pretrial Conference set for 9/2/2011 9:30 AM before Judge

		Orlando L. Garcia, Bench Trial set for 9/6/2011 9:30 AM before Judge Orlando L. Garcia.) Signed by Judge Orlando L. Garcia. (ga) (Entered: 07/27/2011)
		* * *
07/27/2011	78	AMENDED THIRD PARTY COMPLAINT against Rick Perry, State of Texas amending, filed by LULAC.(Vera, Luis) Modified on 7/28/2011, to edit text (rf). (Entered: 07/27/2011)
		* * *
07/29/2011	87	Response in Opposition to Motion, filed by Howard Jefferson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace, re 62 MOTION for Protective Order filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst filed Jointly by NAACP, Lawson, Wallace and Jefferson (Notzon, Robert) (Entered: 07/29/2011)
07/29/2011	88	Response in Opposition to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex

		Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 62 MOTION for Protective Order filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Couto, Rebecca) (Entered: 07/29/2011)
		* * *
08/01/2011	92	CORRECTED EXPEDITED AGREED JOINT MOTION OF ALL PARTIES TO AMEND SCHEDULING ORDER by Eliza Alvarado, Hope Andrade, Hope Andrade, Hope Andrade, Nina Jo Baker, Joey Cardenas, Florinda Chavez, City of Austin, Sergio Coronado, Armando Cortez, Renato De Los Santos, Dorothy DeBose, David Dewhurst, David Dewhurst, Harold Dutton, Jr, Bruce Elfant, David Gonzalez, Alexander Green, Nancy Hall, Jane Hamilton, Sheila

		Jackson–Lee, Howard Jefferson, John Jenkins, Alex Jimenez, Eddie Bernice Johnson, Lyman King, LULAC, Bill Lawson, Betty F *Lopez*, Josey Martinez, Emelda Menendez, Mexican American Legislative Caucus, Texas House of Representatives, John T Morris, Steve Munisteri, Romeo Munoz, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Rudolfo Ortiz, Gregorio Benito Palomino, Balakumar Pandian, Shannon Perez, Rick Perry, Rick Perry, Margarita V Quesada, Socorro Ramos, Boyd Richie, Carmen Rodriguez, Eddie Rodriguez, Sergio Salinas, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, State of Texas, Joe Straus, Joe Strauss, Gregory Tamez, Texas Democratic Party, Texas Latino Redistricting Task Force, Texas Legislative Black Caucus, Texas State Conference of NAACP Branches, Gilberto Torres, Travis County, US Congressman Henry Cuellar, Cynthia Valadez, Juanita Valdez–Cox, Marc Veasey, Juanita Wallace, Milton Gerard

		Washington, Cesar Eduardo Yevenes. (Attachments: #1 Proposed Order) (tm) (Entered: 08/01/2011)
		* * *
08/01/2011	95	First Amended Intervenor COMPLAINT against State of Texas, Rick Perry, David Dewhurst, Joe Strauss, Hope Andrade, filed by Texas Legislative Black Caucus. (tm) (Entered: 08/01/2011)
		* * *
08/02/2011	105	FIRST AMENDED COMPLAINT against Hope Andrade, Rick Perry, filed by Lyman King, Margarita V Quesada, Jane Hamilton, Romeo Munoz, John Jenkins, Marc Veasey, Jamaal R. Smith, Debbie Allen, Sandra Puente, Kathleen Maria Shaw. (tm) (Entered: 08/02/2011)
		* * *
08/02/2011	110	ANSWER to 50 Amended Complaint by David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) Modified on 8/3/2011, to remove filer (rf). (Entered: 08/02/2011)
		* * *
08/08/2011	127	MOTION to Stay Case and to Postpone Trial by Debbie Allen,

		Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey. (Attachments: #1 Proposed Order) (Hebert, J.) (Entered: 08/08/2011)
		* * *
08/08/2011	131	ANSWER to 53 Amended Complaint, Third by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/08/2011)
08/08/2011	132	ANSWER to 68 Amended Complaint, Second by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 08/08/2011)
08/08/2011	133	ANSWER to Complaint First Amended (1:11cv451–LY–JES–OLG; Document No. 23) by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/08/2011)
		* * *
08/10/2011	167	ANSWER to Complaint (Cross) of Texas Democractic Party and Boyd Richie by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 08/10/2011)

	* * *	
08/10/2011	170	Response in Opposition to Motion, filed by Steve Munisteri, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Reilly, Frank) (Entered: 08/10/2011)
08/10/2011	171	RESPONSE in Support, filed by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen

		Maria Shaw, Plaintiff Jamaal R. Smith Supplemental Memorandum (Hebert, J.) (Entered: 08/10/2011)
		* * *
08/10/2011	174	RESPONSE to Motion, filed by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Richards, David) (Entered: 08/10/2011)
		* * *
08/10/2011	177	RESPONSE in Support, filed by Howard Jefferson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman

		King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Riggs, Allison) (Entered: 08/10/2011)
* * *		
08/10/2011	179	Response in Opposition to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Schenck, David) (Entered: 08/10/2011)
08/10/2011	180	Response in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 127 MOTION to Stay Case and to Postpone Trial filed by

		Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Attachments: #1 Proposed Order)(Garza, Jose) (Entered: 08/10/2011)
		* * *
08/10/2011	183	Response in Opposition to Motion, filed by LULAC, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita V Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Vera, Luis) (Entered: 08/10/2011)
08/10/2011	184	RESPONSE to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares,

		Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 127 MOTION to Stay Case and to Postpone Trial filed by Consol Plaintiff John Jenkins, Defendant Lyman King, Consol Plaintiff Marc Veasey, Plaintiff Debbie Allen, Consol Plaintiff Romeo Munoz, Consol Plaintiff Jane Hamilton, Consol Plaintiff Margarita Quesada, Plaintiff Sandra Puente, Plaintiff Kathleen Maria Shaw, Plaintiff Jamaal R. Smith (Couto, Rebecca) (Entered: 08/10/2011)
		* * *
08/11/2011	187	ORDER DENYING 127 Motion to Stay Case. Signed by Judge Orlando L. Garcia. (tm) (Entered: 08/11/2011)
08/11/2011	188	ANSWER to 78 Amended Third Party Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/11/2011)
		* * *

08/15/2011	192	ANSWER to Complaint Amended (SA-11-CA-615-OLG-JES-XR , Doc. 7 - 6/27/2011) by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/15/2011)
08/15/2011	193	ANSWER to 71 Intervenor Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/15/2011)
08/15/2011	194	ANSWER to 69 Amended Complaint by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Schenck, David) (Entered: 08/15/2011)
08/15/2011	195	ANSWER to 105 Amended Complaint by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 08/15/2011)
* * *		
08/17/2011	209	MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed

		Order, #2 Exhibit A, #3 Exhibit B, #4 Exhibit C, #5 Exhibit D, #6 Exhibit E, #7 Exhibit F, #8 Exhibit G, #9 Exhibit H, #10 Exhibit I, #11 Exhibit J) (Schenck, David). Added MOTION for Judgment on the Pleadings on 8/18/2011 (rf). (Entered: 08/17/2011)
08/17/2011	210	MOTION for Partial Summary Judgment and Supporting Memorandum of Law by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus. (Attachments: #1 Proposed Order, #2 Proposed Order, #3 Proposed Order) (Schenck, David) (Entered: 08/17/2011)
		* * *
08/18/2011	217	ORDER directing Plaintiffs to file a response to 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Hope Andrade, State of Texas, Joe Straus, Rick Perry, David Dewhurst and 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Hope Andrade,

		State of Texas, Joe Straus, Rick Perry, David Dewhurst no later than August 23, 2011 at 3:00 pm and Defendants must reply, if any, no later than August 24, 2011 at the close of business day. Signed by Judge Orlando L. Garcia. (tm) (Entered: 08/18/2011)
		* * *
08/22/2011	222	COMPLAINT in Intervention (Filing fee $350 receipt number 0542–3876435). No Summons requested at this time, filed by US Congressman Henry Cuellar. (Rios, Rolando) (Entered: 08/22/2011)
		* * *
08/23/2011	225	Response in Opposition to Motion, filed by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis County, Juanita Valdez–Cox, Milton Gerard Washington, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the

		Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Proposed Order) (McConnico, Stephen) (Entered: 08/23/2011)
08/23/2011	226	Response in Opposition to Motion, filed by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Exhibit 1, #2

		Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Proposed Order, #10 Proposed Order) (Richards, David) (Entered: 08/23/2011)
08/23/2011	227	Response in Opposition to Motion, filed by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst CORRECTED (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5

		Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Proposed Order, #10 Proposed Order) (Richards, David) (Entered: 08/23/2011)
		* * *
08/23/2011	229	RESPONSE to Motion, filed by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis County, Juanita Valdez–Cox, Milton Gerard Washington, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Exhibit, #2 Proposed Order) (McConnico, Stephen) (Entered: 08/23/2011)
08/23/2011	230	Response in Opposition to Motion, filed by US Congressman Henry Cuellar, re 9 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim Upon Which Relief May

		Be Granted filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Rios, Rolando) (Entered: 08/23/2011)
08/23/2011	231	Memorandum in Opposition to Motion, filed by Debbie Allen, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Boyd Richie, Kathleen Maria Shaw, Jamaal R. Smith, Texas Democratic Party, Marc Veasey, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Hebert, J.) (Entered: 08/23/2011)
08/23/2011	232	Response in Opposition to Motion, filed by Alexander Green, Sheila Jackson-Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace, re 210 MOTION for

		Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 SEALED Exhibit 1 , #2 SEALED Exhibit 2, #3 SEALED Exhibit 3, #4 SEALED Exhibit 4, #5 SEALED Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Exhibit 9, #10 Exhibit 10, #11 Exhibit 11, #12 Exhibit 13, #13 Exhibit 14, #14 Exhibit 15, #15 Exhibit 16, #16 Exhibit 17, #17 Exhibit 18, #18 Exhibit 19, #19 Exhibit 12) (Notzon, Robert) Modified on 8/23/2011, to SEAL exhibits 1–5 per counsel's request (rf). (Entered: 08/23/2011)
08/23/2011	233	Memorandum in Opposition to

		Motion, filed by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Appendix) (Hebert, J.) (Entered: 08/23/2011)
08/23/2011	234	RESPONSE to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the

		Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Exhibit 1, #2 Proposed Order) (Perales, Nina) (Entered: 08/23/2011)
		* * *
08/23/2011	236	Response in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Proposed Order) (Garza, Jose) (Entered: 08/23/2011)
08/23/2011	237	Response in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope

		Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Proposed Order) (Garza, Jose) (Entered: 08/23/2011)
		* * *
08/23/2011	239	Response in Opposition to Motion, filed by LULAC, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst, 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Attachments: #1 Affidavit) (Vera, Luis) (Entered: 08/23/2011)
08/23/2011	240	RESPONSE to Motion, filed by John T Morris, re 209 MOTION to Dismiss for Lack of

		Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst CORRECTED COPY (Morris, John) (Entered: 08/23/2011)
		* * *
08/23/2011	242	RESPONSE to Motion, filed by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst for Partial Summary Judgment (Attachments: #1 Affidavit in support, #2 Exhibit 1 and 2, #3

		Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 5–6, #7 Exhibit 6 cont, #8 Exhibit 7–12, #9 Exhibit 13–28, #10 Exhibit 29–33, #11 Exhibit 34–37, #12 Exhibit 38, #13 Exhibit 39 part 1, #14 Exhibit 39–40, #15 Exhibit 40–1, #16 Exhibit 40–2, #17 Exhibit 40–3, #18 Exhibit 40–4, #19 Exhibit 40–5, #20 Exhibit 40–6, #21 Exhibit 40–7, #22 Exhibit 40–8, #23 Exhibit 40–9, #24 Exhibit 40–41, #25 Exhibit 41–1, #26 Exhibit 41–42, #27 Exhibit 42 cont) (Perales, Nina) (Entered: 08/23/2011)
	* * *	
08/24/2011	249	REPLY to Response to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Schenck, David) (Entered: 08/24/2011)

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08/24/2011	251	REPLY to Response to Motion, filed by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus, re 210 MOTION for Partial Summary Judgment and Supporting Memorandum of Law filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst (Schenck, David) (Entered: 08/24/2011)
	* * *	
08/29/2011	258	Memorandum in Opposition to Motion, filed by Mexican American Legislative Caucus, Texas House of Representatives, re 209 MOTION to Dismiss for Lack of Jurisdiction and, in the Alternative, Motion for Judgment on the Pleadings MOTION for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant State of Texas, Defendant Joe Straus, Defendant Rick Perry, Defendant David Dewhurst MALC Surreply (Attachments: #1 Exhibit exhibit 1, #2 Exhibit exhibit 1 continued, #3 Exhibit exhibit 2, #4 Exhibit exhibit 3,

		#5 Exhibit exhibit 4) (Garza, Jose) (Entered: 08/29/2011)
		* * *
08/31/2011	273	MOTION to Amend Complaint and order by John T Morris. (Attachments: #1 Amended Complaint) (Morris, John) (Entered: 08/31/2011)
08/31/2011	274	TRIAL BRIEF on the merits by John T Morris. (Morris, John) (Entered: 08/31/2011)
08/31/2011	275	ORDER GRANTING IN PART on the Fifteenth Amendment claims, and such claims are DISMISSED as a matter of law. The motion is otherwise DENIED, and the remaining claims shall proceed to trial 210 Motion for Partial Summary Judgment. Signed by Judge Orlando L. Garcia. (rg) (Entered: 08/31/2011)
08/31/2011	276	ORDER regarding pretrial conference and trial on the merits. Signed by Judge Orlando L. Garcia. (tm) (Entered: 08/31/2011)
		* * *
09/01/2011	280	MOTION for Reconsideration re 275 Order on Motion for Partial Summary Judgment, Regarding Dismissal of Fifteenth Amendment claims by Debbie

		Allen, Nancy Hall, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey. (Attachments: #1 Proposed Order) (Hebert, J.) (Entered: 09/01/2011)
		* * *
09/02/2011	285	ORDER GRANTING IN PART AND DENYING IN PART 209 Motion to Dismiss for Lack of Jurisdiction, and in the alternative, Motion for Judgment on the Pleadings. Signed by Judge Orlando L. Garcia. (tm) (Entered: 09/02/2011)
09/02/2011	286	ORDER DENYING 280 Motion for Reconsideration; GRANTING 271 Motion to Withdraw as Attorney; DENYING 273 Motion to Amend Complaint as moot; 263 Motion to Unseal Document is WITHDRAWN at this time. Signed by Judge Orlando L. Garcia. (tm) (Entered: 09/02/2011)
		* * *
09/06/2011	288	TRIAL BRIEF Joint by Alexander Green, Sheila

		Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 09/06/2011)
		* * *
09/06/2011	290	ANSWER to Complaint by Rick Perry, State of Texas. (Schenck, David) (Entered: 09/06/2011)
		* * *
09/06/2011	294	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial begun on 9/6/2011 (Minute entry documents are not available electronically.), Bench Trial held on 9/6/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage, Jerry Anderson.) (tm) (Entered: 09/07/2011)
		* * *
09/07/2011	297	Minute Entry for proceedings held before Judge Orlando L. Garcia, Xavier Rodriguez, Jerry E. Smith: Bench Trial held on 9/7/2011 (Minute entry documents are not available electronically.). (Court Reporter Chris Poage, Karl Meyers, Jerry

		Anderson.) (tm) Modified on 9/8/2011 to add additional Judge information (tm). (Entered: 09/08/2011)
		* * *
09/08/2011	299	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Xavier Rodriguez, Judge Jerry E. Smith: Bench Trial held on 9/8/2011 (Minute entry documents are not available electronically.). (Court Reporter Chris Poage, Karl Meyers, Jerry Anderson.) (tm) (Entered: 09/09/2011)
		* * *
09/09/2011	301	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/9/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Anderson.) (tm) (Entered: 09/09/2011)
09/10/2011	302	STIPULATION *OF FACTS* by Debbie Allen, Nancy Hall, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, State of Texas, Marc

		Veasey. (Hebert, J.) (Entered: 09/10/2011)
		* * *
09/10/2011	305	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith and Judge Xavier Rodriguez: Bench Trial held on 9/10/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Meyers, Jerry Anderson.) (tm) (Entered: 09/12/2011)
		* * *
09/12/2011	309	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/12/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage, Jerry Anderson.) (rf) (Entered: 09/13/2011)
09/13/2011	310	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/13/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Meyers, Jerry Anderson.) (tm) (Entered:

		09/13/2011)
09/14/2011	311	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry E. Smith, Judge Xavier Rodriguez: Bench Trial held on 9/14/2011 (Minute entry documents are not available electronically.). (Court Reporter Chris Poage, Karl Meyers,.) (tm) (Entered: 09/14/2011)
* * *		
09/16/2011	336	Minute Entry for proceedings held before Judge Orlando L. Garcia, Judge Jerry Smith, Judge Xavier Rodriguez: Bench Trial completed on 9/16/2011 (Minute entry documents are not available electronically.) All Offers of Proof and Declarations submitted by Plaintiffs are due no later than Monday, September 19, 2011. Simultaneous trial briefs due by 6:00 p.m. on Friday, October 7, 2011. Simultaneous replies due by 6:00 p.m. on Friday, October 21, 2011. (Court Reporter Chris Poage, Karl Meyers, Jerry Anderson.) (tm) Modified judge information on 9/19/2011 (tm). (Entered: 09/19/2011)
* * *		

09/23/2011	369	ADVISORY TO THE COURT by Hope Andrade, David Dewhurst, Rick Perry, State of Texas, Joe Straus re Discovery Schedule in Section 5 proceeding. (Attachments: #1 Exhibit A) (Schenck, David) (Entered: 09/23/2011)
		* * *
09/29/2011	380	ORDER ENJOINING THE IMPLEMENTATION OF VOTING CHANGES: GRANTING 375 Motion for TRO. Signed by Judge Orlando L. Garcia. (tm) (Entered: 09/29/2011)
		* * *
09/30/2011	384	MOTION for Reconsideration re 285 Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion for Judgment on the Pleadings by Boyd Richie, Texas Democratic Party. (Attachments: #1 Proposed Order) (Dunn, Chad) (Entered: 09/30/2011)
09/30/2011	385	ORDER entering schedule to run simultaneously with any other deadlines in this case, with the goal of implementing an interim plan in the event it becomes necessary. Signed by Judge Orlando L. Garcia. (tm)

		(Entered: 09/30/2011)
		* * *
10/03/2011	388	ORDER that the 384 MOTION for Reconsideration re 285 Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion for Judgment on the Pleadings filed by Texas Democratic Party, Boyd Richie and 386 MOTION for Reconsideration (Joined Texas Democratic Party and Boyd Richie) filed by John T Morris are under advisement until further notice while the litigation proceeds. Signed by Judge Orlando L. Garcia. (tm,) (Entered: 10/03/2011)
		* * *
10/04/2011	391	AMENDED ORDER implementing schedule to run simultaneously with any other deadlines in this case, with the goal of implementing an interim plan in the event it becomes necessary. Signed by Judge Orlando L. Garcia. (tm) (Entered: 10/04/2011)
		* * *
10/04/2011	394	ORDER that the parties' post trial briefs due October 7, 2011, are not exceed fifty (50) pages. Signed by Judge Orlando L.

		Garcia. (tm) (Entered: 10/04/2011)
		* * *
10/07/2011	405	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas REGARDING INTERIM REAPPORTIONMENT. (Schenck, David) (Entered: 10/07/2011)
10/07/2011	406	TRIAL BRIEF (Joint) by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 10/07/2011)
		* * *
10/07/2011	408	Proposed Findings of Fact by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace (Joint). (Riggs, Allison) (Entered: 10/07/2011)
10/07/2011	409	BRIEF by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey

		Post–Trial. (Hebert, J.) (Entered: 10/07/2011)
10/07/2011	410	**BRIEF** by Eddie Rodriguez, Milton Gerard Washington, Bruce Elfant, Balakumar Pandian, Alex Serna, Sandra Serna, Betty F. *Lopez*, David Gonzalez, Beatrice Saloma, Lionor Sorola–Pohlman, Eliza Alvarado, Juanita Valdez–Cox, Josey Martinez, Nina Jo Baker, Travis County, City of Austin Post–Trial Brief of Rodriguez Plaintiffs. (Hicks, Max) Modified on 10/11/2011, to add filers (rf). (Entered: 10/07/2011)
10/07/2011	411	**TRIAL BRIEF** Post Trial Brief by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Appendix) (Schenck, David) (Entered: 10/07/2011)
10/07/2011	412	**BRIEF** by Mexican American Legislative Caucus, Texas House of Representatives post trial brief. (Garza, Jose) (Entered: 10/07/2011)
10/07/2011	413	Proposed Findings of Fact by Hope Andrade, Rick Perry, State of Texas Proposed Findings of Fact and Conclusions of Law. (Schenck, David) (Entered: 10/07/2011)
* * *		

10/08/2011	416	TRIAL BRIEF by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes. (Couto, Rebecca) (Entered: 10/08/2011)
10/11/2011	417	TRIAL BRIEF by LULAC. (Vera, Luis) (Entered: 10/11/2011)
10/11/2011	418	ORDER regarding appointment of technical advisors to the Court. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/11/2011)
		* * *
10/11/2011	424	BRIEF regarding 410 Brief, by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Balakumar Pandian, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis

		County, Juanita Valdez–Cox, Milton Gerard Washington (Corrected). (Hicks, Max) (Entered: 10/11/2011)
		* * *
10/17/2011	436	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas ADVISORY REGARDING INTERIM MAP. (Schenck, David) (Entered: 10/17/2011)
10/17/2011	437	RESPONSE Cong Cuellar Propose Interim Plan to 391 Order by US Congressman Henry Cuellar. (Attachments: #1 Exhibit, #2 Exhibit) (Rios, Rolando) (Entered: 10/17/2011)
10/17/2011	438	STATEMENT OF ISSUES Rodriguez Plaintiffs' Submission on Interim Court–Ordered Plan Issues by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Balakumar Pandian, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis County, Juanita Valdez–Cox, Milton Gerard Washington. (Attachments: #1 Exhibit, #2 Exhibit, #3 Exhibit, #4 Exhibit,

		#5 Exhibit, #6 Exhibit, #8 Exhibit, #9 Exhibit) (Hicks, Max) (Entered: 10/17/2011)
10/17/2011	439	ADVISORY TO THE COURT by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey Proposing Remidial Congressional Redistricting Plan. (Attachments: #1 Appendix, #2 Appendix, #3 Appendix) (Hebert, J.) (Entered: 10/17/2011)
10/17/2011	440	ADVISORY TO THE COURT by Mexican American Legislative Caucus, Texas House of Representatives proposed interim court plans. (Attachments: #1 Exhibit, #2 Exhibit, #3 Exhibit, #4 Exhibit, #5 Exhibit, #6 Exhibit, #7 Exhibit) (Garza, Jose) (Entered: 10/17/2011)
10/17/2011	441	ADVISORY TO THE COURT by Alexander Green, Sheila Jackson-Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace On Interim Maps.

		(Attachments: #1 Exhibit Identification of issues in Section 5 case) (Notzon, Robert) (Entered: 10/17/2011)
		* * *
10/17/2011	444	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes with respect to Interim Plans. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E, #6 Exhibit F, #7 Exhibit G, #8 Exhibit H) (Couto, Rebecca) (Entered: 10/18/2011)
		* * *
10/21/2011	455	BRIEF regarding 411 Trial Brief by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez Reply Brief. (Attachments: #1 Exhibit)

		(Richards, David) (Entered: 10/21/2011)
10/21/2011	456	TRIAL BRIEF Reply to Defendants' Trial Brief 411 by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 10/21/2011)
10/21/2011	457	RESPONSE to Plaintiffs' Post–Trial Briefs by Hope Andrade, Rick Perry, State of Texas. (Schenck, David) (Entered: 10/21/2011)
		* * *
10/21/2011	459	BRIEF by Mexican American Legislative Caucus, Texas House of Representatives Reply to State's Post Trial Brief. (Garza, Jose) (Entered: 10/21/2011)
		* * *
10/24/2011	463	ADVISORY TO THE COURT by US Congressman Henry Cuellar Objections to Proposed Interim Plans. (Rios, Rolando) (Entered: 10/24/2011)
10/24/2011	464	RESPONSE to Proposed Interim Remedial Redistricting Plans by Joey Cardenas, Florinda Chavez, Sergio

		Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes. (Perales, Nina) (Entered: 10/24/2011)
		* * *
10/24/2011	466	RESPONSE to Interim Plans by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 10/24/2011)
10/24/2011	467	RESPONSE of Quesada Plaintiffs to State of Texas' Proposed Interim Plan to 436 Advisory to the Court by Debbie Allen, Nancy Hall, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey. (Attachments: #1 Exhibit DOJ Letter to state of Texas) (Hebert, J.) (Entered:

		10/24/2011)
10/24/2011	468	Miscellaneous Objection to Proposed Interim Plans by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Exhibit, #2 Exhibit) (Schenck, David) (Entered: 10/24/2011)
		* * *
10/28/2011	474	ADVISORY TO THE COURT by Mexican American Legislative Caucus, Texas House of Representatives joint advisory of the parties. (Garza, Jose) (Entered: 10/28/2011)
10/28/2011	475	ADVISORY TO THE COURT by OF AMERICA UNITED STATES regarding Statement of Interest Under Section 5 of the Voting Rights Act of 1965. (Attachments: #1 Exhibit Memorandum of Points and Authorities in Support of its Opposition to Plaintiff's Motion for Summary Judgment, #2 Exhibit Statement of Genuine Issues) (Sitton, Jaye) (Entered: 10/28/2011)
		* * *
10/30/2011	477	NOTICE of Filing of Supplemental Proposed Interim Plan by Honorable Francisco "QuicoCanseco, US Congressman Henry Cuellar

		(Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3) (Gober, Christopher) (Entered: 10/30/2011)
		* * *
10/31/2011	479	Minute Entry for proceedings held before Judge Orlando L. Garcia, Jerry E. Smith, Xavier Rodriguez: Three–Judge Court Hearing held on 10/31/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage.) (rf) (Entered: 11/01/2011)
11/01/2011	480	ORDER – proposed order(s) regarding election deadlines must be submitted to the Court by 10:00 a.m. on Friday, November 4, 2011. Signed by Judge Orlando L. Garcia. (rf) Modified on 11/1/2011, to edit text (rf). (Entered: 11/01/2011)
		* * *
11/03/2011	485	Minute Entry for proceedings held before Judge Orlando L. Garcia: Hearing on Interim Plans held on 11/3/2011. (Minute entry documents are not available electronically.). (Court Reporter Karl Myers, Chris Poage.) (rg) (Entered: 11/04/2011)

11/04/2011	486	ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from December 15, 2011 until the date of the General Election, and it is, It is further ORDERED that an incorrect precinct designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before December 19, 2011. An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period. ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the

		Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order. The political parties shall deliver this order and notice thereof to county party chairs without delay. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/04/2011)
		* * *
11/07/2011	489	AMENDED ORDER. This amendment to the Court's Order 486 dated 11/4/11, makes only one correction to the date contained in subsection l. Signed by Judge Orlando L. Garcia. (rf) Modified on 11/7/2011, to edit text (rf). (Entered: 11/07/2011)
		* * *
11/07/2011	504	ADVISORY TO THE COURT by OF AMERICA UNITED STATES Statement of Interest of the United States With Respect to Section 2 of the Voting Rights Act. (Attachments: #1 Exhibit, #2 Exhibit) (Sitton, Jaye) (Entered: 11/07/2011)
11/08/2011	505	ADVISORY TO THE COURT by Mexican American Legislative

		Caucus, Texas House of Representatives Regarding DC District Court Order Denying State's Motion for Summary Judgment. (Attachments: #1 Exhibit) (Garza, Jose) (Entered: 11/08/2011)
11/08/2011	506	ORDER (Setting Status Conference for 11/14/2011 08:00 AM before Judge Orlando L. Garcia to discuss the status of all proceedings in light of the D.C. Court's most recent ruling and any other matters relevant to the Court's drawing of interim plans under the deadlines currently in place.) Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/08/2011)
11/10/2011	507	ORDER Cancelling Deadline – The status conference previously scheduled for Monday, November 14, 2011 is cancelled, but the Court will hold a status conference in the very near future. This decision is based on a majority of the panel. Circuit Judge Jerry Smith dissents from the decision to postpone the trial and status conference. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/10/2011)

11/10/2011	508	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas TO THE COURT REGARDING DEVIATION FROM EQUALIZED DISTRICT POPULATION IN INTERIM REDISTRICTING PLANS. (Attachments: #1 Exhibit) (Schenck, David) (Entered: 11/10/2011)
		* * *
11/14/2011	512	RESPONSE to 508 Advisory to the Court by Dorothy DeBose, Harold Dutton, Jr, Nancy Hall, Rudolfo Ortiz, Shannon Perez, Carmen Rodriguez, Sergio Salinas, Gregory Tamez. (Attachments: #1 Exhibit) (Richards, David) (Entered: 11/14/2011)
11/15/2011	513	RESPONSE to Department of Justice's Brief on Interim Maps to 504 Advisory to the Court by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Exhibit A – Report of Handley, #2 Exhibit B – Report of Alford, #3 Exhibit C – Depo of Handley, #4 Exhibit D – Depo of Alford – Section 5) (Schenck, David) (Entered: 11/15/2011)
11/15/2011	514	ADVISORY TO THE COURT by Jane Hamilton, John Jenkins,

		Lyman King, Romeo Munoz, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey Regarding Filings by the State Defendants and the United States. (Hebert, J.) (Entered: 11/15/2011)
		* * *
11/17/2011	516	NOTICE of Filing Of LULAC And NAACP Statewide Alternative Congressional Plan C–218 by LULAC (Vera, Luis) (Entered: 11/17/2011)
11/17/2011	517	ORDER the parties are ordered to access the proposed plans and file any comments and/or objections by 11/18/11. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/17/2011)
11/18/2011	518	RESPONSE to 517 Order by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes. (Perales, Nina)

		(Entered: 11/18/2011)
		* * *
11/18/2011	521	ADVISORY TO THE COURT by State of Texas Objections to Court's Proposed Interim House Plans. (Attachments: #1 Exhibit) (Schenck, David) (Entered: 11/18/2011)
		* * *
11/23/2011	526	ORDER The parties are ordered to access the proposed plans and file any comments and/or objections by noon on Friday, 11/25/11. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/23/2011)
		* * *
11/23/2011	528	ORDER regarding interim plan for the districts used to elect members in 2012 to the Texas House of Representatives.. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, Judge Xavier Rodriguez. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E, #6 Exhibit F) (rf) (Entered: 11/23/2011)
11/23/2011	529	Opposed MOTION to Stay Implementation of Interim House Redistricting Plan by Hope Andrade, Rick Perry,

		State of Texas. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 11/23/2011)
11/25/2011	530	ADVISORY TO THE COURT by US Congressman Henry Cuellar Advisory on Proposed Interim Congressional Plan. (Rios, Rolando) (Entered: 11/25/2011)
11/25/2011	531	ADVISORY TO THE COURT by Alexander Green, Sheila Jackson–Lee, Howard Jefferson, Eddie Bernice Johnson, Bill Lawson, Texas State Conference of NAACP Branches, Juanita Wallace. (Riggs, Allison) (Entered: 11/25/2011)
11/25/2011	532	ADVISORY TO THE COURT by Mexican American Legislative Caucus, Texas House of Representatives. (Garza, Jose) (Entered: 11/25/2011)
11/25/2011	533	ADVISORY TO THE COURT by Eliza Alvarado, Nina Jo Baker, City of Austin, Bruce Elfant, David Gonzalez, Betty F *Lopez*, Josey Martinez, Balakumar Pandian, Eddie Rodriguez, Beatrice Saloma, Alex Serna, Sandra Serna, Lionor Sorola–Pohlman, Travis County, Juanita Valdez–Cox, Milton Gerard Washington.

		(Hicks, Max) (Entered: 11/25/2011)
11/25/2011	534	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, State of Texas Objections to the Court's Proposed Interim Congressional Plans. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C) (Schenck, David) (Entered: 11/25/2011)
11/25/2011	535	ADVISORY TO THE COURT by Honorable Francisco "QuicoCanseco. (Gober, Christopher) (Entered: 11/25/2011)
11/25/2011	536	ADVISORY TO THE COURT by Debbie Allen, Jane Hamilton, John Jenkins, Lyman King, Romeo Munoz, Sandra Puente, Margarita V Quesada, Kathleen Maria Shaw, Jamaal R. Smith, Marc Veasey by Quesada Plaintiffs regarding court's proposed congressional plan. (Hebert, J.) (Entered: 11/25/2011)
11/25/2011	537	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares,

		Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes regarding Plan C220. (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	538	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes Exhibit B to Dkt. 537. (Attachments: #1 Exhibit B to Dkt. 537) (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	539	SUPPLEMENT to 534 Advisory to the Court DEFENDANTSAMENDED EXHIBIT A TO OBJECTIONS TO THE COURTS PROPOSED INTERIM CONGRESSIONAL PLANS by Hope Andrade, Rick

		Perry, State of Texas. (Attachments: #1 Exhibit) (Schenck, David) (Entered: 11/25/2011)
11/25/2011	540	ADVISORY TO THE COURT by LULAC re C220. (Vera, Luis) (Entered: 11/25/2011)
11/25/2011	541	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes Exhibits C, D &E to Dkt. 537. (Attachments: #1 Exhibit C–1, #2 Exhibit C–2, #3 Exhibit C–3, #4 Exhibit C–4, #5 Exhibit C–5, #6 Exhibit C–6, #7 Exhibit C–7, #8 Exhibit C–8, #9 Exhibit C–9, #10 Exhibit C–10, #11 Exhibit D, #12 Exhibit E) (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	542	ADVISORY TO THE COURT by Joey Cardenas, Florinda Chavez, Sergio Coronado, Armando Cortez, Renato De Los

		Santos, Alex Jimenez, Emelda Menendez, Jose Olivares, Tomacita Olivares, Alejandro Ortiz, Rebecca Ortiz, Gregorio Benito Palomino, Socorro Ramos, Texas Latino Redistricting Task Force, Gilberto Torres, Cynthia Valadez, Cesar Eduardo Yevenes Exhibit A to Dkt. 537. (Attachments: #1 Exhibit A–1, #2 Exhibit A–2, #3 Exhibit A–3, #4 Exhibit A–4, #5 Exhibit A–5) (Couto, Rebecca) (Entered: 11/25/2011)
11/25/2011	543	ORDER DENYING 529 Opposed MOTION to Stay Implementation of Interim House Redistricting Plan filed by Hope Andrade, State of Texas, Rick Perry. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, Judge Xavier Rodriguez. (mo,) (Entered: 11/25/2011)
11/26/2011	544	ORDER adopting PLAN C220 as the interim plan for the districts used to elect members in 2012 to the United States House of Representatives. Signed by Judge Orlando L. Garcia. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C) (mo,) (Entered:

		11/26/2011)
11/27/2011	545	Opposed MOTION to Stay IMPLEMENTATION OF INTERIM CONGRESSIONAL REDISTRICTING PLAN by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 11/27/2011)
11/27/2011	546	ORDER DENYING 545 Motion to Stay implementation of the court–drawn interim congressional redistricting plan pending appeal. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, and Judge Xavier Rodriguez. (mo,) (Entered: 11/27/2011)
11/27/2011	547	Appeal of Order entered by District Judge 528 by Hope Andrade, Rick Perry, State of Texas. No filing fee submitted (Schenck, David) (Entered: 11/27/2011)
11/29/2011	548	Amended Appeal of Order entered by District Judge 543, 546 by Hope Andrade, Rick Perry, State of Texas. Amended Notice of Appeal No filing fee submitted (Schenck, David) (Entered: 11/29/2011)
12/02/2011	549	Supplemental Opinion Signed by Judge Orlando L. Garcia,

		Circuit Judge Jerry E. Smith, and Judge Xavier Rodriguez. (mo,) Modified on 12/2/2011 (mo,). (Entered: 12/02/2011)
		* * *
12/11/2011	552	MOTION to Confirm Sigle Primary for 2012 Elections by LULAC. (Vera, Luis) Modified on 12/12/2011, to edit text (rf). (Entered: 12/11/2011)
12/12/2011	553	Opposed MOTION to Stay Candidate Filing and Administrative Deadlines by Hope Andrade, Rick Perry, State of Texas. (Attachments: #1 Exhibit U.S. Supreme Court Order Granting Stay and Noting Probable Jurisdiction, #2 Proposed Order) (Schenck, David) (Entered: 12/12/2011)

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (San Antonio)

Civil Docket for Case #5:11-cv-00788-OLG-JES-XR

DAVIS, et al.* v. *PERRY, et al.

Date Filed	#	Docket Text
09/22/2011	1	COMPLAINT (Filing fee $350 receipt number 0542–3957870), filed by Sarah Joyner, Vicky Bargas, Pat Pangburn, Marc Veasey, Roy Brooks, Wendy Davis, Frances DeLeon, Dorothy DeBose. (Attachments: #1 Civil Cover Sheet) (Richards, David) (Entered: 09/22/2011)
* * *		
09/23/2011	4	ORDER appointing three judge panel to Judge Orlando L. Garcia, Judge Jerry E. Smith and Judge Xavier Rodriguez. Signed by Judge Orlando L. Garcia. (kh2) (Entered: 09/23/2011)
* * *		
09/28/2011	7	EXPEDITED SCHEDULING ORDER: Trial Before the Three Judge Panel set for 11/14/2011 8:00 AM. Pretrial Conference set for 11/10/2011 08:30 AM before Judge Orlando L. Garcia.

		Discovery due by 10/31/2011. Motions due by 11/2/2011. Signed by Judge Orlando L. Garcia. (rf) (Entered: 09/28/2011)
09/29/2011	8	ORDER ENJOINING THE IMPLEMENTATION OF VOTING CHANGES. Signed by Judge Orlando L. Garcia. (rf) (Entered: 09/29/2011)
		* * *
10/03/2011	10	ANSWER to 1 Complaint by Steve Munisteri. (Opiela, Eric) (Entered: 10/03/2011)
10/03/2011	11	MOTION to Dismiss Claims Pursuant to Rule 21 by Steve Munisteri. (Attachments: #1 Proposed Order)(Opiela, Eric) (Entered: 10/03/2011)
10/03/2011	12	ORDER Implementing Schedule. Signed by Judge Orlando L. Garcia. (tm) (Entered: 10/03/2011)
		* * *
10/03/2011	14	ANSWER to 1 Complaint by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 10/03/2011)
10/04/2011	15	AMENDED ORDER re 12 Order. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/04/2011)
		* * *
10/07/2011	17	ADVISORY TO THE COURT by Hope Andrade, Rick Perry REGARDING INTERIM

		REAPPORTIONMENT. (Schenck, David) (Entered: 10/07/2011)
10/07/2011	18	BRIEF by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Sarah Joyner, Pat Pangburn, Marc Veasey on Remedy. (Hebert, J.) (Entered: 10/07/2011)
10/11/2011	19	ORDER regarding the appointment of technical advisors to the Court. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/11/2011)
		* * *
10/13/2011	25	ORDER the parties shall file a brief advisory to the Court within seven days. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/13/2011)
		* * *
10/17/2011	28	ADVISORY TO THE COURT by Hope Andrade, Rick Perry ADVISORY REGARDING INTERIM MAP. (Schenck, David) (Entered: 10/17/2011)
10/17/2011	29	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Sarah Joyner, Pat Pangburn, Marc Veasey Proposed Remedial Interim State Senate Plan. (Attachments: #1 Appendix, #2 Appendix) (Hebert, J.)

		(Entered: 10/17/2011)
		* * *
10/19/2011	33	ORDER Consolidating this case with SA11-CV-855. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/19/2011)
10/19/2011	34	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Sarah Joyner, Pat Pangburn, Marc Veasey on Laches. (Hebert, J.) (Entered: 10/19/2011)
10/19/2011	35	ADVISORY TO THE COURT by Hope Andrade, Rick Perry Advisory to the Court Regarding Laches. (Schenck, David) (Entered: 10/19/2011)
10/20/2011	36	REPLY to Response to Motion, filed by Steve Munisteri, re 11 MOTION to Dismiss Claims Pursuant to Rule 21 filed by Defendant Steve Munisteri (Opiela, Eric) (Entered: 10/20/2011)
10/20/2011	37	ADVISORY TO THE COURT by Steve Munisteri Regarding Laches. (Opiela, Eric) (Entered: 10/20/2011)
10/20/2011	38	AMENDED ANSWER to 1 Complaint by Hope Andrade, Rick Perry. (Schenck, David) (Entered: 10/20/2011)

	* * *	
10/21/2011	40	MOTION to Dismiss and for Judgment on the Pleadings by Hope Andrade, Rick Perry, The State of Texas. (Attachments: #1 Proposed Order)(Schenck, David) (Entered: 10/21/2011)
10/24/2011	41	MOTION to Stay Case by Hope Andrade, Rick Perry, The State of Texas. (Attachments: #1 Proposed Order) (Schenck, David) (Entered: 10/24/2011)
10/24/2011	42	ORDER Plaintiffs are ordered to respond by 2:00 p.m. on 10/26/11, to 41 MOTION to Stay Case filed by Hope Andrade, Rick Perry, The State of Texas. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/24/2011)
10/24/2011	43	ORDER Plaintiffs are Ordered to respond by 3:00 p.m. on 10/30/11, to 40 MOTION to Dismiss filed by Hope Andrade, Rick Perry, The State of Texas. Signed by Judge Orlando L. Garcia. (rf) (Entered: 10/24/2011)
10/24/2011	44	RESPONSE of Plaintiffs to State of Texas Proposed Interim Plan to 28 Advisory to the Court by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLæon, Sarah Joyner, Pat Pangburn, Marc Veasey. (Hebert,

		J.) (Entered: 10/24/2011)
10/25/2011	45	Miscellaneous Objection to 32 Advisory to the Court, DEFENDANTS OBJECTIONS TO PLAINTIFFS PROPOSED INTERIM PLANS by Hope Andrade, Rick Perry, The State of Texas. (Mattax, David) (Entered: 10/25/2011)
10/26/2011	46	Memorandum in Opposition to Motion, filed by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey, re 41 MOTION to Stay Case filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas (Attachments: #1 Exhibit Ex. 1, #2 Exhibit Ex. 2)(Hebert, J.) (Entered: 10/26/2011)
10/27/2011	47	ORDER DENYING 41 Motion to Stay Proceedings and the parties shall continue to proceed under the scheduling orders currently in effect. Signed by Judge Orlando L. Garcia. (kh,) (Entered: 10/27/2011)
10/28/2011	48	ADVISORY TO THE COURT by Hope Andrade, Vicky Bargas, Roy

		Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Clare Dyer, Domingo Garcia, David Hanna, Sarah Joyner, League of United Latin American Citizens, Steve Munisteri, Pat Pangburn, Rick Perry, Boyd Richie, The State of Texas, Marc Veasey Joint Advisory Regarding Remedy Hearing. (Hebert, J.) (Entered: 10/28/2011)
10/30/2011	49	Response in Opposition to Motion, filed by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey, re 40 MOTION to Dismiss and for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas Joint Response of Davis Plaintiffs and LULAC (Attachments: #1 Proposed Order, #2 Exhibit Exhibit 1 Sen. Zaffirini Declaration, #3 Exhibit Exhibit 2 Sen. Ellis Declaration, #4 Exhibit Exhibit 3 Rep. Veasey Declaration)(Hebert, J.) (Entered: 10/30/2011)
* * *		
11/01/2011	51	ORDER – proposed order(s)

		regarding election deadlines must be submitted to the Court by 10:00 a.m. on Friday, November 4, 2011. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/01/2011)
		* * *
11/04/2011	54	ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from December 15, 2011 until the date of the General Election, and it is, It is further ORDERED that an incorrect precinct designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before December 19, 2011. An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period. ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an

		exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order. The political parties shall deliver this order and notice thereof to county party chairs without delay. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/04/2011)
11/04/2011	55	REPLY to Response to Motion, filed by Hope Andrade, Rick Perry, The State of Texas, re 40 MOTION to Dismiss and for Judgment on the Pleadings filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas (Schenck, David) (Entered: 11/04/2011)
11/05/2011	56	MOTION for Summary Judgment by Hope Andrade, Rick Perry, The State of Texas. (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4, #5 Exhibit 5, #6 Exhibit 6, #7 Exhibit 7, #8 Exhibit 8, #9 Exhibit 9 part 1, #10 Exhibit 9 part 2, #11 Exhibit 10, #12

		Exhibit 11, #13 Exhibit 12, #14 Exhibit 13, #15 Exhibit 14, #16 Exhibit) (Jordan, Ana) (Entered: 11/05/2011)
		* * *
11/04/2011	65	Minute Entry for proceedings held before Judge Orlando L. Garcia: Miscellaneous Hearing held on 11/4/2011 (Minute entry documents are not available electronically.). (Court Reporter Karl Myers.) (rf) (Entered: 11/07/2011)
		* * *
11/08/2011	68	The Parties are ORDERED to file an advisory no later than 8:00 a.m. on Thursday, November 10, 2011 advising whether the Court should proceed with trial on the merits of the Plaintiffs' challenge to the State's enacted map at this time. The parties should state their reasons for either proceeding with the trial on Monday or waiting until a later time. Signed by Judge Orlando L. Garcia. (rg) (Entered: 11/08/2011)
		* * *
11/09/2011	70	ADVISORY TO THE COURT by Texas Democratic Party. (Dunn, Chad) (Entered: 11/09/2011)
11/09/2011	71	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, The

		State of Texas on Trial Date. (Schenck, David) (Entered: 11/09/2011)
11/09/2011	72	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey Regarding November 14, 2011 Trial Date. (Hebert, J.) (Entered: 11/09/2011)
11/09/2011	73	Memorandum in Opposition to Motion, filed by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey, re 56 MOTION for Summary Judgment filed by Defendant Hope Andrade, Defendant Rick Perry, Consol Defendant The State of Texas (Attachments: #1 Appendix Statement of Material Facts in Dispute, #2 Exhibit 1, #3 Exhibit 2, #4 Exhibit 3, #5 Exhibit 4, #6 Exhibit 5, #7 Exhibit 6, #8 Exhibit 7, #9 Exhibit 8, #10 Exhibit 9, #11 Exhibit 10, #12 Exhibit 11, #13 Exhibit 12, #14 Exhibit 13, #15 Exhibit 14, #16

		Exhibit 15, #17 Exhibit 16, #18 Exhibit 17, #19 Exhibit 18, #20 Memo in Support 19, #21 Exhibit 20)(Hebert, J.) (Entered: 11/09/2011)
		* * *
11/10/2011	81	ORDER Cancelling Deadline – After considering the parties' advisories and the status of the proceedings in this Court and in the District Court in D.C., the Court agrees with the parties. A trial on the merits of the challenges to the enacted Senate plan should be postponed until such time as it becomes necessary to address the merits of those challenges. In addition, the Court has determined that a status conference will be more productive if it is postponed for a brief period of time, during which the Court will continue its work on interim plans. The status conference previously scheduled for Monday, November 14, 2011 is cancelled, but the Court will hold a status conference in the very near future. This decision is based on a majority of the panel. Circuit Judge Jerry Smith dissents from the decision to postpone the trial and status conference. Signed by Judge

		Orlando L. Garcia. (rg) Modified text on 11/10/2011 (rg). (Entered: 11/10/2011)
		* * *
11/10/2011	83	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, The State of Texas REGARDING DEVIATION FROM EQUALIZED DISTRICT POPULATION IN INTERIM REDISTRICTING PLANS. (Attachments: #1 Exhibit)(Schenck, David) (Entered: 11/10/2011)
11/11/2011	84	ADVISORY TO THE COURT by Domingo Garcia, League of United Latin American Citizens Joint LULAC–Davis Plaintiffs Senate Plan. (Attachments: #1 Exhibit Demographic, Population and Voter Data s160)(Vera, Luis) (Entered: 11/11/2011)
11/14/2011	85	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey Regarding Population Equality and Interim Plans. (Hebert, J.) (Entered: 11/14/2011)
11/17/2011	86	ORDER the parties are ordered to access the proposed interim plan

		and file any comments and/or objections by 11/18/11. Signed by Judge Orlando L. Garcia. (rf) (Entered: 11/17/2011)
11/18/2011	87	ADVISORY TO THE COURT by Vicky Bargas, Roy Brooks, Wendy Davis, Dorothy DeBose, Frances DeLeon, Domingo Garcia, Sarah Joyner, League of United Latin American Citizens, Pat Pangburn, Marc Veasey Regarding Court's Proposed Interim Plan S163. (Hebert, J.) (Entered: 11/18/2011)
11/18/2011	88	ADVISORY TO THE COURT by Hope Andrade, Rick Perry, The State of Texas Objections to Court's Proposed Interim Senate Plans. (Attachments: #1 Exhibit, #2 Exhibit) (Schenck, David) (Entered: 11/18/2011)
11/23/2011	89	ORDER regarding the interim plan for the districts used to elect members in 2012 to the Texas Senate. Signed by Judge Orlando L. Garcia. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C) (rf) (Entered: 11/23/2011)
11/23/2011	90	Opposed MOTION to Stay Implementation of Interim Senate Redistricting Plan by Hope Andrade, Rick Perry, The

		State of Texas. (Attachments: #1 Proposed Order)(Schenck, David) (Entered: 11/23/2011)
11/25/2011	91	ORDER Denying 90 Opposed MOTION to Stay Implementation of Interim Senate Redistricting Plan filed by Hope Andrade, Rick Perry, The State of Texas. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, Judge Xavier Rodriguez. (mo,) (Entered: 11/25/2011)
11/26/2011	92	AMENDED ORDER re 91 Order denying Motion to Stay Implementation of the Court-Drawn Interim Senate Redistricting Plan. Signed by Judge Orlando L. Garcia, Circuit Judge Jerry E. Smith, and Judge Xavier Rodriguez. (mo,) (Entered: 11/26/2011)
11/27/2011	93	Appeal of Order entered by District Judge 89 by Hope Andrade, Rick Perry, The State of Texas. No filing fee submitted (Schenck, David) (Entered: 11/27/2011)

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 12/16/11
Document 563

ORDER

Under consideration are various motions and issues pertaining to redistricting of the United States House of Representatives, the Texas House of Representatives and the Texas State Senate. The two major political parties have carefully worked out the agreement giving rise to this order and no party to this consolidated action has objected. The order has been reviewed by the Secretary of State's office as well as numerous county election officers including those in Dallas, Harris, Travis and Bexar counties. The Court appreciates the good faith and diligence of all of those who have fashioned this recommendation.

The following schedule is contingent upon this Court entering redistricting plans for Texas House, Senate and Congress on or before February 1, 2012.

It should be carefully noted, however, that nothing in this Order should be construed as an assurance or prediction that new redistricting plans will have been ordered by February 1, 2012. This Court has no control over the timing of decisions by other courts that are involved in this process.

Residency

Therefore, it is ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from February 1, 2012 until the date of the General Election, and,

It is further ORDERED that an incorrect precinct, district or place designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before February 1, 2012 at 6 p.m. If a previously filed application indicated a district, precinct or place designation specifying a particular map to which that designation applied, or if the application did not specify a district, precinct, or place designation, and one is required for the office sought, the application shall be rejected if not amended to correct such designation prior to 6 p.m. February 1, 2012. Any petition submitted in lieu of filing fee must contain valid signatures of registered voters of the territory from which the office sought is elected in the number required by the Texas Election Code, and must be submitted to the appropriate filing authority no later than 6:00 p.m., February 1, 2012.

An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period.

Schedule for Reopened Filing Period and General Primary

The Court hereby adopts and orders this procedure with respect to the 2012 Primary Election for federal, state, county and local offices. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law:

a. Subsections (c)-(m) of this Court's Order of November 7, 2011 (Docs. 57 and 489) are vacated. Ballot drawings and delivery of candidate lists as provided for in that order are not required until after the close of the reopened filing period as set forth below.

b. The first day to file an application for a place on the Primary Ballot during the reopened filing period as described in Texas Election Code § 172.023(b) shall be at a future date to be determined by this Court.

c. An application for a place on the general primary election ballot during the reopened filing period must be filed not later than 6 p.m. on February 1, 2012 as described in Texas Election Code § 172.023(a). All amendments to previously filed applications with respect to office, precinct, place or any other material detail must be completed by this time. Candidates, and not filing authority

election staff, may amend their applications by replacing the whole page of such application that requires changes. Each submitted page must contain the signature of the candidate and the date it was signed. Political parties that make their nominations by convention and do not hold a primary election may accept applications until 6:00 p.m., February 1, 2012. Applications filed with the incorrect authority are deemed to have been timely received by the correct authority if the authority who received the application was the correct authority at the time the application was originally filed. Applications filed with the incorrect authority shall be forwarded to the correct authority without delay.

d. The last day a vacancy for an unexpired term in an office of the state or county government may occur and appear on the primary ballot, as described in Texas Election Code § 202.004(a), is January 27, 2012.

e. The deadline for the county chair (or secretary of the county executive committee) to post a notice on the bulletin board used for posting notices of the commissioners court's meetings, containing the address at which the county chair and secretary of the county executive committee will be available to receive applications on the last day for filing an

application, as described in Texas Election Code § 172.022, is January 31, 2012.

f. If a candidate withdraws, dies or is declared ineligible by February 2, 2012, the name is omitted from the primary ballot as described Texas Election Code §§172.057 & 172.058.

g. The deadline for a state chair to deliver a certified list of statewide and multi-county district candidates to each county chair, as described in Texas Election Code § 172.028(b), is February 2, 2012.

h. The deadline for a write-in candidate for the office of county or precinct chair to file a declaration of write-in, as described in Texas Election Code § 171.0231(d), is February 1, 2012.

i. The deadline for the state or county chair, as applicable, to receive applications for a place on the general primary election ballot for an unexpired term for a vacancy in an office of the state or county government that occurs on or before January 27, 2012, as described in Texas Election Code § 202.004(b) is February 1, 2012.

j. The deadline for a county executive committee to conduct a drawing for candidate order on the ballot at the county seat (unless the committee provides by resolution that the primary committee is to conduct drawing), as described in Texas Election Code § 172.082(c), is February 3, 2012.

k. The deadline by which the state chair shall deliver the chair's list to the secretary of state, and each county chair shall deliver a copy of the chair's list to the county clerk, the state chair, and the Secretary of State as described in Texas Election Code § 172.029(c), is February 2, 2012.

l. If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes on or before January 31, 2012, as described in Texas Election Code § 42.03 2. The requirements of Texas Election Code § 42.036 are suspended for an order of a commissioner's court adopted to comply with this section of this Court's Order.

m. The first day of the period for a voter to submit an application for an early ballot by mail for the general primary, or for both the general primary and the runoff primary election, as described in Texas Election Code § 84.00 1(d), (e) & 84.007, shall be February 11,2011.

n. On or before February 13, 2012, the registrar shall issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense list, as described in Texas Election Code § 14.001.

o. **The 2012 General Primary Election shall be held on April 3, 2012.** All

deadlines and dates specified as changed in this Order, or in previously issued orders in this action shall be observed as provided for in the Texas Election Code.

p. The deadline for runoff primary candidates to withdraw from the runoff ballot, as described in Section 172.059, Election Code is 5 p.m. April 10, 2012.

q. The local canvass of the general primary for county and precinct offices by the county executive committee, as described in Texas Election Code § 172.116(b) and 172.084(b) shall occur on or before April 11, 2012.

r. The deadline for county chairs to submit canvassed returns for statewide and district offices to the state party chair as described in Texas Election Code § 67.007(d) and 172.119(b) is Noon, April 12, 2012.

s. The deadline for the state executive committees to conduct the canvass of statewide and district offices with potential runoffs, and certify these candidates to county chairs as described in Texas Election Code § 172.120 and 172.121, is 5 p.m., April 14, 2012.

t. The ballot drawing conducted by county executive committee for all offices on the primary runoff ballot, as described in Texas Election Code § 172.084(b) and (c) shall occur no later than 9 a.m., April 16, 2012.

u. The first day of the period for a voter to submit an application for an early ballot by mail for the runoff primary, as described in Texas Election Code § 84.001(d), (e) & 84.007, shall be April 6, 2011

v. County and Senatorial District Conventions, as described in Texas Election Code § 174.063, shall be held on either April 14 or April 21, 2012 as determined by the State Chair of each political party.

w. The 2012 General Primary Runoff Election shall be held on June 5, 2012.

Therefore, it is ORDERED that the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's web site shall be updated to reflect the terms of this order.

Nothing in this order shall be construed by the Court or the parties as a waiver of the positions of each party with respect to the schedule or conduct of the upcoming election. The parties' positions as stated at the December 13, 2011 hearing are expressly reserved. Additionally, the Republican and Democratic parties have agreed that it is necessary to have a primary early enough in April to allow

them to conduct their statutorily required conventions as previously planned.

SIGNED this **16th** day of **December**, 2011.

ORLANDO GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of:

JERRY E. SMITH
UNITED STATES CIRCUIT JUDGE
U.S. COURT OF APPEALS, FIFTH CIRCUIT

and

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 12/02/11
Document 549

SUPPLEMENTAL OPINION

The State of Texas has appealed the Court orders implementing the court drawn plans for the districts to be used to elect members in the Texas House of Representatives (Dkt. No. 528) and the United States House of Representatives (Dkt. No. 544). The Court previously indicated, in its order implementing the plan for the Texas House, that "[a] more comprehensive opinion addressing additional legal issues will follow."[1] Dkt. No. 528. This

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[1] The dissent criticizes the issuance of this supplemental opinion as having "the smell of a brief on appeal." The Court's prior order expressly stated that a supplemental opinion would follow because the Court was unable to issue a full opinion under the severe time constraints. The sole purpose of this opinion is to provide a detailed explanation for how the Court drafted the interim House plan for the benefit of the parties, the Supreme Court, and future redistricting panels.

supplemental opinion serves to further clarify the legal issues discussed in the Court's prior two orders, which were released under severe time restraints. Because the Court has not ruled on the merits of any claims herein and the State's appeal is interlocutory in nature, this Court has not lost jurisdiction over this matter and this Supplemental Opinion should be filed in this consolidated action and considered for all purposes.[2] The Court requests that the parties ensure that this Supplemental Opinion be filed with the U.S. Supreme Court.

Despite rhetoric of a "runaway plan," the Court's plan gave as much consideration to the State's enacted map as possible without rubberstamping the districts that were the subject of legal challenges; this consideration was given to the enacted plans even though, as discussed below, a finding that a three judge court is required to apply *Upham* deference prior to a preclearance determination defies the plain language of the Voting Rights Act, the legislative intent behind Section 5, existing Supreme Court precedent, and a myriad of practical realities. Those practical realities include the Court's obligation to ensure that the interim map does not contain split VTDs so that it is capable of being implemented under severe time constraints. This prevents the Court from adopting even the unchallenged districts from the enacted plan

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[2] The State brought its appeal under 28 U.S.C. § 1253, which applies to interlocutory orders determined by a three judge district court. Section 1253 is analogous to section 1292(a)(1), which gives the courts of appeals jurisdiction to hear appeals from interlocutory orders in other cases. *See Goldstein v. Cox*, 396 U.S. 471, 475 (1970).

wholesale. Moreover, the Court is prevented from making Section 5 determinations not only because it lacks jurisdiction to do so, but also because as a practical reality, the three judge panel has not heard evidence regarding Section 5; nor could it hear that evidence and make those determinations without wasting an enormous amount of judicial resources and potentially reaching a result that would later be inconsistent with a D.C. Court ruling.

I.

Legal Standard

The State and dissent argue that there is a tension between the two leading Supreme Court cases addressing court drawn maps – *Upham v. Seamon*, 456 U.S. 37 (1982) and *Lopez v. Monterey County*, 519 U.S. 9 (1996). Specifically, it is argued that *Upham* directs remedial courts to always defer to state policy decisions, while *Lopez* directs remedial courts to not implement maps reflecting state policy choices that have not been precleared. They therefore advocate that this Court defer to the legislative choices of the State of Texas represented by the enacted House plan and Congressional maps by applying a preliminary injunction standard to evaluate whether the state plan violates federal law.

As explained in our prior orders, the Court disagrees with this analysis. The Court does not read *Lopez* and *Upham* as being in tension with one another; to the contrary, the Court believes that they outline the different legal standards applicable to cases where there are official objections by the Attorney General, as opposed to cases where there is no enacted plan or where preclearance is pending. As

such, we believe that deferring to the enacted plans is improper because doing so would interfere with the preclearance process in the D.C. Court.

This result is consistent with the plain language of Section 5 and the legislative history of the Voting Rights Act. Section 5 provides that "*unless and until* the [the United States District Court for the District of Columbia enters a judgment] no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure." 42 U.S.C. § 1973c (emphasis added). Thus, by the statute's plain terms, a voting change cannot be implemented until the D.C. Court has issued a judgment.

The legislative history is similarly supportive of the Court's position. In 1975, when Congress adopted amendments to the Act, the Senate Committee issued its Report on S.1279, which addressed the appropriate role of remedial courts. First, the Committee cited favorably to the Supreme Court's decision in *Connor v. Waller*, 421 U.S. 656 (1975). There, the Court ruled that even when a governmental body adopts a plan that is patterned after a court-drawn plan, it still must submit the plan for Section 5 preclearance. *Id.* at 656-57. The Court further concluded that federal courts should not make determinations regarding constitutional questions until all Section 5 challenges have been resolved. The Committee concluded that this result "is consistent with the Committee's objective to utilize a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or the District of

Columbia District Court." S. Rep. No. 94-295, p. 18 (1975) (hereinafter "Senate Report").

The Committee then went on to note that when a court adopts a plan proposed by the State during litigation, that plan also must be submitted for Section 5 preclearance. The Committee noted that "[t]he one exception where section 5 review would not ordinarily be available is where the court because of exigent circumstances actually fashions the plan itself instead of relying on a plan presented by a litigant." *Id.* at 19. In such cases, "the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." *Id.*

The Supreme Court has noted that "[t]he view expressed by the Committee is consistent with the basic purposes of the statute and with the well-settled rule that § 5 is to be given a broad construction. The preclearance procedure is designed to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process. The federal interest in preventing local jurisdictions from making changes that adversely affect the rights of minority voters is the same whether a change is required to remedy a constitutional violation or is merely the product of a community's perception of the desirability of responding to new social patterns." *McDaniel v. Sanchez*, 452 U.S. 130, 149-50 (1981) (citations and footnotes omitted).

Thus, the Court must draw independent redistricting plans without ruling on the merits of the pending legal challenges to the State's

unprecleared plans. Connor, 421 U.S. at 656-67 (because the Act would not be effective until precleared under § 5, the district court erred in deciding the constitutional challenges to the Act based on claims of racial discrimination); *Mississippi v. Smith*, 541 F. Supp. 1329, 1332 (D.D.C. 1982) (the remedial court "lacks jurisdiction to consider the constitutionality of the plan before it has been precleared pursuant to section 5"). The United States and many intervenors have denied that the State is entitled to preclearance and they have challenged the Texas House and Congressional plans under Section 5 of the Voting Rights Act, claiming: (1) that the plans (and not simply specific districts therein) were drawn with discriminatory intent; (2) the plans have the purpose and effect of denying or abridging minorities' right to vote; and (3) the plans are retrogressive because minorities have the opportunity to elect their candidate of choice in proportionally fewer districts when compared with the benchmark plan. *See* Dkt. Nos. 53, 79, filed in *State of Texas v. United States*, Civil Action No. 11-CV-1303, in the United States District Court for the District of Columbia.

The United States has stated that the evidentiary basis for its claim of discriminatory intent "is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977)." Dkt. No. 53, p. 7, filed in State of Texas v. United States, Civil Action No. 11-CV-1303, in the District Court for the

District of Columbia. The intervenors also assert that while certain districts exhibit characteristics that are indicative of discriminatory purpose, they are challenging the plans in their entirety. *See id.*, Dkt. No. 53, pp. 16-17 (MALC); p. 18 (Gonzales); p. 23 (Texas Latino Redistricting Task Force). The United States has asserted that when the State is requesting preclearance of a statewide plan, analysis of retrogression should be conducted on a statewide basis. *Georgia v. Ashcroft*, 539 U.S. 461, 479 (2003); *City of Lockhart v. United States*, 60 U.S. 125 (1983). See Dkt. No. 79, United States' Memorandum in Support of its Opposition to the State's Motion for Summary Judgment, p. 10, filed in State of Texas v. United States, Civil Action No. 11- CV-1303, in the District Court for the District of Columbia.

The Section 5 challenges are not the only pending legal challenges to the State's enacted plans. Plaintiffs and intervenors in this case have challenged the Texas House and Congressional plans under the Fourteenth Amendment as "racial gerrymanders" that intentionally discriminate against minorities and violate the one person, one vote principle. They also assert that the unprecleared plans dilute the voting strength of minority voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.[3] The Court has heard

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[3] *See* Quesada plaintiffs' first amended complaint, Dkt. No. 105; MALC's second amended complaint, Dkt. No. 50; Latino Redistricting Task Force's second amended complaint, Dkt. No. 68; Perez plaintiffs' third amended complaint, Dkt. No. 53; Rodriguez plaintiffs' first amended complaint, Dkt. No. 23, filed in Cause No. 11-CA-635, prior to consolidation; LULAC's first

evidence on the parties' legal challenges, but the Court has not reached any determination on the merits of those challenges and, as noted above, is precluded from doing so unless or until the State's enacted plan has been precleared.

II.

A. Preliminary Injunction Standard is Inappropriate

As noted above, the State and dissent advocate for the use of a preliminary injunction standard in this case. There are obvious reasons why the Court cannot do so. First, there is no motion for preliminary injunction pending before the Court, nor has one ever been filed. Unless a motion for preliminary injunction is filed, there is no legal basis for the application of preliminary injunction standards. If the State in this case had been trying to implement an unenforceable plan, such as the benchmark plan or the unprecleared plan, the plaintiffs could have moved for injunctive relief and they clearly would have been entitled to such relief.[4] However, the State has agreed since the inception of this case that its enacted plans are unenforceable unless or until precleared and it has not tried to implement its plans. There has been no need for affirmative injunctive relief in this case. Even if there had been a need for injunctive relief, and the

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amended and supplemental complaint, Dkt. No. 78; NAACP' s amended complaint, Dkt. No. 69.

[4] "If a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the change." *Lopez*, 519 U.S. at 20.

Court had been required to enjoin the State from implementing its unprecleared plans, there would be no legal basis for applying a traditional preliminary injunction standard in drawing an independent court-ordered plan.

Second, and more importantly, is the intrusion on the preclearance process. As discussed above, there are statewide Section 5 challenges to both the Texas House and Congressional plans pending preclearance. The Court does not have jurisdiction to determine those issues, preliminarily or otherwise. *U.S. v. Bd. of Sup'rs of Warren County*, 429 U.S. 642, 645 (1977) ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General – the determination whether a covered change does or does not have the purpose or effect of denying or abridging the right to vote on account of race or color."). Because preclearance must be determined before any other issues are ripe for this Court's consideration, the Supreme Court has forbidden remedial district courts from making any determination on the merits of the State's enacted plans until *after* preclearance. *Conner v. Waller*, 421 U.S. at 656-57; *Smith v. Clark*, 189 F. Supp. 2d at 534. This clearly includes any preliminary determination as to whether plaintiffs are "likely to succeed" on the merits of their claims, regardless of whether those claims arise under the Voting Rights Act or the U.S. Constitution.

Moreover, if a three judge panel was required to apply a preliminary injunction standard in the interim map stage, it would be forced to hear

evidence regarding Section 5 and to make determinations regarding the applicable legal standards for Section 5 claims. *See Texas v. United States*, 785 F. Supp. 201, 205 (D.D.C. 1992) (Section 5 determinations "require [the court] to conduct some kind of hearing . . . [and] is not an issue that can be resolved as a matter of law."). This could lead to inconsistent factual findings and determinations regarding Section 5 legal standards, undermining the purpose of consolidating Section 5 cases in the D.C. Court. Additionally, if a preliminary injunction standard were used, it would allow legislatures to intentionally enact voting changes at the last minute in order to obtain a preliminary ruling by a local federal court that would potentially allow the change to take effect, thereby completely circumventing the Section 5 preclearance process.[5]

Finally, a preliminary injunction standard is not a manageable standard for a three judge panel attempting to draw an interim map. Determining violations of the Voting Rights Act is a complex and fact intensive exercise that requires courts to assess discriminatory motives on the one hand and complex data regarding discriminatory effect on the other. *See Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471,

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[5] Indeed, the 1975 Senate Committee on the Voting Rights Act extension noted that the Voting Rights Act was enacted because Congress was presented with "evidence of the great lengths to which certain jurisdictions would go in order to circumvent the guarantees of the 15th Amendment." Senate Report at 15. Thus, Congress created the Section 5 preclearance requirement to "insure that any future practices of these jurisdictions [would] be free of both discriminatory purpose and effect." *Id.*

488 (1997) ("[A]ssessing a jurisdiction's motivation in enacting voting changes is a complex task requiring a sensitive inquiry into such circumstantial and direct evidence as may be available."); *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966) ("The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant").

In cases where a court-drawn interim map is required because a state has submitted a redistricting plan for preclearance, but no preclearance decision has been issued, the maps will always be drawn under time intensive conditions. This is true even in cases such as this, where a lawsuit was filed seven months in advance of the filing period for candidates. The reason is the Supreme Court's decision in *Growe v. Emison*, 507 U.S. 25 (1993). In *Growe*, the Supreme Court held that "absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Id.* at 34. A three judge panel, therefore, has no choice but to wait as long as possible before implementing an interim map, in the hopes that a preclearance decision will be rendered.[6]

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[6] In the instant case, the Court pushed back the election filing period from the middle of November to November 28, 2011. The Court then adjusted the close of the filing period from December 12, 2011 to December 15, 2011. However, the filing period could not be delayed any further without serious disruptions to the 2012 election cycle.

While waiting, it is entirely reasonable for the three judge panel to hold hearings and take evidence. Indeed, the Court in this case held a two week trial in September and a second three day hearing in October/November. However, it would be a waste of judicial resources for the three judge panel to begin the complicated merits analysis required of Voting Rights Act claims before it becomes likely that an interim map will actually be necessary. This is especially true for the two district judges on the panel who must manage full dockets, including criminal dockets with speedy trial requirements, with only two law clerks. In this case, there are close to fifty separate challenges to three different electoral maps. The analysis required to make legal findings on those challenges, even preliminarily, would be intensive and unfeasible in the time provided without otherwise negatively affecting the remainder of the Court's docket. It would not be an efficient use of judicial resources to consider the myriad of complex legal and factual issues involved in the merits analysis, when all of those issues would become moot if preclearance were to be granted or denied as to the whole map.

III.

Summary of the process used by the Court in drawing the House plan[7]

As discussed in the Court's prior order entered on November 23, 2011, the Court drew its plan for the Texas House after considering all of the parties' proposed plans. For many districts, the Court considered the configuration in the State's enacted plan, and for others the Court attempted to stay true to benchmark configuration, at least as much as possible. The Court was mindful of the various legal challenges to the State's enacted plan and attempted to avoid the same legal challenges to the court drawn map. The Court took a cautious approach to drawing the map, ensuring that the existing minority opportunity districts were preserved to avoid Section 2 and/or Section 5 violations.

The tremendous population growth caused many changes in district lines. In drawing the lines, the Court tried to avoid splitting county lines unless those concerns were trumped by constitutional concerns. *See Reynolds v. Sims*, 377 U.S. 533, 584 84 S.Ct. 1362 (1964)("When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls"). The Court ensured that all districts were contiguous and reasonably compact. It also attempted to avoid the division of municipal

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[7] The Court's order dated November 26, 2011 adequately explains the process used in drawing the Congressional plan, so the Court limits this part of its opinion to the Texas House plan.

boundaries and broader communities of interest. The Court tried to avoid pairing incumbents – out of 150 House districts, incumbents were paired in seven (7) districts, assuming those representatives wish to run for re-election. And finally, the Court attempted to adhere to the historical or benchmark configuration of the districts as much as possible. These neutral criteria served the Court well in drawing up a plan that may not be perfect but certainly conforms to all legal requirements.

The Court was also concerned with not splitting "VTDs." A VTD is a voter tabulation district and is the functional equivalent of a voting precinct. After hearing evidence at trial and in the interim plan hearing, it became clear that cutting VTDs would create enormous administrative and financial difficulties for local governments preparing for an election at the eleventh hour. *See Vera v. Bush*, 933 F. Supp. 1341, 1347 (S.D. Tex. 1996) ("Moreover, the Court's remedial plan addresses the single most troubling and realistic hurdle, the potential splitting of voter tabulation districts ('VTD's'), by avoiding that consequence in all but a small handful of voting precincts."). Specifically, the Court was informed that voters must be assigned to a precinct in order to get new registration cards and that precincts must be drawn before voters can be assigned. If counties are able to use the existing VTDs, nothing else needs to be done. Also, by not changing the VTDs, the county may not have to submit any voting changes to the Department of Justice for preclearance. The Court therefore endeavored to avoid as many VTD cuts as possible, and ultimately was able to craft a House plan with only 8 VTD cuts. In contrast, the

enacted plan appears to have 412 VTD cuts, and the dissent plan appears to have 179 VTD cuts.

The State has consistently criticized the Court's plan for making "unnecessary" changes to uncontested districts without finding any legal violations. As explained above, the Court does not believe that it was required to provide any deference to the enacted maps. However, even if the Court was required to give *Upham* deference to the interim maps, the Court would still have needed to make the changes to the uncontested districts to correct cuts in the VTDs that would have impeded implementation of the plan under intense time constraints.

As discussed in the Court's November 23, 2011 order, the Court began by considering the uncontested districts from the enacted plan that embraced neutral districting principles. Although the Court was not required to give any deference to the Legislature's enacted plan, the Court attempted to embrace as many of the uncontested districts as possible. After inserting those districts into the map, the Court adjusted them to avoid VTD cuts and to achieve *de minimis* population deviations.

After incorporating as many of the uncontested districts as possible into the interim map, the Court turned to the districts that are challenged as unconstitutional and attempted to return them to their original configuration in the benchmark, while giving consideration to any apparently neutral districting principles in the enacted plan. Harris County was the subject of numerous objections by Plaintiffs and the Department of Justice in both this

Court and the D.C. Court.[8] In drawing the districts for Harris County, the Court first had to determine how many districts to allot it. Based purely on population, Harris County is entitled to 24.4 districts; but, in the benchmark Harris County had 25 districts, which was purportedly the result of a legislative compromise to allow for greater minority representation. The enacted plan reduced the number of districts to 24, but the Plaintiffs encouraged the Court to maintain 25 districts in Harris County. Ultimately, the Court decided to reduce it to 24 districts because basing the number of districts on population was the most neutral principle available. In addition, the Court was informed that the incumbent in District 136 would be retiring, which would allow the Court to reduce the number of districts without unseating any representatives.

Next, the Court had to determine which districts would remain in Harris County and how they would be configured. In deciding which district to eliminate, the Legislature had removed District 149 from Harris County, which was a minority district represented by one of the only Asian members of the House. The removal of District 149 led to a Section 5 objection by the Department of Justice in the D.C. Court and a Section 2 objection by the Plaintiffs in this case. In accordance with the goal of maintaining the status quo and avoiding retrogression, the Court

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[8] Specifically, there were Section 5 challenges to Districts 144, 146, and 149; Section 2 challenges to Districts 137, 144, and 149; and Fourteenth Amendment challenges to Districts 137, 145, and 147.

and the dissent decided to defer to the benchmark plan and placed District 149 back in Harris County. The Court then removed District 136 from Harris County, which as noted above had a retiring incumbent.

After resolving those issues, a number of the remaining districts were still the subject of objections. The Court attempted to draw Harris County as close to the benchmark as possible, while giving consideration wherever possible to the enacted map. However, because of the removal of District 136 and the Court's effort to not break VTDs, it was not possible to completely restore Harris County to its original configuration. Nevertheless, the Court was able to keep most districts in roughly their same position as the benchmark.[9]

The Court has been criticized for allegedly "creating" an additional Black opportunity district in Harris County (District 144). However, the Court did not strive to create any Section 2 districts. District 144 arose naturally from the changing demographics in Harris County. Over the past 10 years, minority

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[9] Indeed, drawing the Harris County portion of the House map was probably the most challenging task this Court undertook in crafting the interim maps. But with the invaluable assistance of the Texas Legislative Council, nine districts in Harris County retained more than 70% of its population from the benchmark, and an additional eight districts retained more than 50% of their original population. The Court's map also bears similar resemblance to the enacted plans – nine of the Harris County districts contain more than 70% of their population in the enacted plans, and eleven districts contain more than 50% of the same population as the enacted plan.

growth in Harris County has increased by over 700,000, while Anglo population decreased by more than 82,000.[10] Thus, over 89% of the population growth in Harris County was due to minority growth. Because of the significant minority growth in Harris County, it is inevitable that a neutral approach could produce an additional minority district, especially since the combined minority population is in excess of 65%.[11] In Dallas County the Plaintiffs objected to all of the districts on one-person one-vote grounds.

Specifically, it is alleged that the State intentionally manipulated Districts 103, 104 and 105 in order to overpopulate minority districts.[12] In addition, because Dallas County did not grow in

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[10] Census data can be viewed at http://factfinder.census.gov. Specifically, the Court's calculations indicate that in Harris County the Black population increased by 146,873; the Latino population increased by 551,789; and the Asian population grew by 78,406. In contrast, the Court calculates that Anglo population decreased by 82,618.

[11] According to census data, Anglos only make up 33% of the population in Harris County. *See* http://factfinder.census.gov.

[12] Specifically, Plaintiffs allege that District 105 in the enacted plan was drawn to try and put a Republican in office and as a result was overpopulated by 8,091 because large amounts of Hispanic populations were taken out by fingers that protrude into it from District 103 (splitting approximately 10 precincts). The removed Hispanic population was then allegedly replaced with exceedingly large amounts of Anglo population from a finger that runs south, overpopulating District 105 by Anglos, and thereby diluting the voting strength of the minorities in District 105. Plaintiffs further allege that another byproduct of this endeavor is that Latino opportunity District 103 became the most overpopulated district in the county.

population at the same rate as the rest of the state, Dallas County lost two House seats. In determining which two districts to remove, the Court first ensured that minority districts were preserved to avoid any Voting Rights Act issues. The Court then looked to the enacted plan and noted that the Legislature removed two Anglo districts – Districts 101 and 106. After considering the Constitutional and Voting Rights Act issues, the Court gave consideration to the State's enacted plan and also removed Districts 101 and 106 from Dallas County. The Court then attempted to restore as much of Dallas County to the benchmark configuration as possible, while giving consideration whenever possible to the enacted maps.[13] Once again this was a difficult task because the loss of two districts inevitably required that changes be made to the remaining districts.

The dissent criticizes the Court for allegedly "creating" a new coalition minority district (District 107). However, as discussed above, the Court has not intentionally created any minority districts. Rather, any additional minority districts resulted from the use of neutral districting principles and demographic changes. The 2010 census demonstrates that the black population in Dallas County increased by more than 97,000 and the Latino population increased by

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[13] Out of the thirteen districts in Dallas County, four of the Court's Dallas districts contain more than 70% of their original population from the benchmark, and an additional four districts contain more than 50% of their original population. Compared to the enacted plan, eight districts contain more than 70% of the enacted population, and one additional district contains more than 50% of the enacted population.

more than 243,000, while the Anglo population declined by almost 200,000.[14] Thus, as in Harris County, it is inevitable that a neutral approach could produce additional minority districts, especially since, once again, the combined minority population is in excess of 65%.[15]

Three districts in Tarrant County are challenged under Section 2, Section 5, and one-person one-vote. With regard to one-person one-vote, the Plaintiffs allege that Districts 90 and 95 have bizarre configurations as a result of packing minorities into already effective minority districts, which was allegedly done to prevent the creation of another minority opportunity district in District 96, and thereby preserve the Republican incumbent in District 96. In addition, all the districts in Tarrant County, but especially Districts 90, 93, and 95, are alleged by the intervenors in the D.C. Court to violate Section 5 because of the alleged intentional fragmentation of minorities resulting in exceptionally and unnecessarily contorted districts.

In drafting the districts for Tarrant County, the Court first determined that because of population growth, the County received an additional district. The Court decided to place the new district, which is numbered District 101 in the Court map and District

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[14] Census data can be viewed at http://factfinder.census.gov. Specifically, the Court's calculations indicate that in Dallas County the Black population increased by 97,584 and the Latino population increased by 243,211. In contrast, the Court calculates that Anglo population decreased by 198,624.

[15] According to census data, Anglos only make up 33.1% of the population in Dallas County. *See* http://factfinder.census.gov.

93 in the enacted map,[16] in the same location as the State – along the southeast border of the County. Next the Court attempted to return the districts to their configuration in the benchmark, while giving appropriate consideration to any neutral policy choices apparent in the enacted plans.[17] In doing so, the Court ensured that there were no VTD cuts.

The dissent criticizes the Court's approach to Tarrant County, arguing that "the plaintiffs had offered no evidence that the slight population deviations were the result of racial gerrymandering." Dkt No. 528, at 24. The dissent completely ignores the fact that there is a Section 5 challenge to the entire county, with special emphasis placed on Districts 90, 93, and 95. By rubberstamping the State's configuration for Tarrant County, the dissent is making a de facto ruling on a Section 5 issue. Finally, by failing to remove the State's VTD cuts, the dissent incorporates 31 VTD cuts, a number that is unmanageable given the current time constraints.

In Nueces County, the Department of Justice objected to the alleged intentional dismantling of Latino dominated District 33. In order to maintain

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[16] The Court gave the new district the new number (101), while the State gave the new district an old number (93). The Court kept District 93 as it was in the benchmark plan – along the eastern Tarrant County line.

[17] Of the 10 original districts in Tarrant County, seven districts in the Court's map contain more than 80% of their population in the benchmark, two contain more than 70%, and one contains more than 50%. Compared to the enacted plan, nine of the Court's districts contain more than 70% of the enacted population.

the status quo and avoid any potential Section 5 issues, both the Court plan and the dissent plan restored the minority opportunity district in Nueces County. In doing so, the Court configured the districts such that they would avoid incumbent pairings. However, at least one pairing was inevitable; so, the Court drew District 33 in a way that paired the same incumbents that were paired in the enacted plan.

In Bell County, District 54 was challenged under Section 2 and Section 5 of the Voting Rights Act. The Plaintiffs argue that under Section 2 a compact coalition district could be created in Bell County with fewer county line cuts than the State's enacted map. Further, the Intervenors in the D.C. Court argue that in the benchmark plan, District 54 changed from a 55.4 percent Anglo majority in 2000 to a 51.5 percent minority majority in 2010, but that the State split the minority population of the City of Killeen with district 55 (which increased over five percentage points from 2000 to 2010) rather than unite Killeen into a single district.

As it did with the other challenged districts, the Court went back to the benchmark and noted that District 54 included all of rural Lampasas and Burnett Counties, but then had a county line cut into Bell County to allow a tail from District 54 to pick up most of the City of Killeen. Since 2010, Lampasas and Burnett Counties have experienced significantly less population growth compared to the

rest of the State.[18] Bell County in contrast experienced 30.4% growth, with Killeen experiencing 47.2% growth, which is more than 56% of the entire population growth in Bell County.[19] Further, according to the Court's calculations, Killeen had 4 times the population growth of Burnett County and Lampasas County combined.

In order to comply with Texas's county-line rule, the Court determined that given the population growth in Bell County, the county-line cut was now unnecessary. Thus, using neutral districting principles, the Court created a district wholly within Bell County where the population growth had primarily occurred, turning what had been a tail coming out of benchmark District 54 into its own district, also numbered District 54. Because the vast majority of the population in benchmark District 54 had come from Killeen, the Court's District 54 includes 80.2% of the same population as the benchmark District 54.[20] Bell County and Lampasas were then united in District 55 and Burnett County was pulled into District 20, consistent with the State's enacted map.

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[18] Census data indicates that Lampasas County grew from 17,762 to 19,677 and Burnett County grew from 34,147 to 42,750.

[19] Census data indicates that Bell County grew from 237,974 to 310,235, and that the City of Killeen in particular grew from 86,911 to 127,921.

[20] In terms of population, this is not radically different from the enacted plan. The Court's District 54 includes 72% of the same population as the enacted plan.

The dissent criticizes the Court's configuration of District 54, alleging that the Court "created" a coalition district. However, District 54 is not even a performing minority district. Under the criteria used by the United States' expert, Dr. Handley, the minority candidate of choice would be elected 1 out of 5 times using the Department of Justice index. Under an additional index calculated by the office of the Attorney General, the minority candidate of choice would be elected 2 out of 10. Once again, the Court did not intentionally create a minority district, rather the district resulted from demographic changes. The bulk of the growth in Bell County occurred in the City of Killeen, and 80% of that growth was Black or Latino.[21] But under the dissent's theory, the district should not have been created even though it arose naturally because it is primarily minority and allegedly not required under the Voting Rights Act.

In Hidalgo County, the Plaintiffs in this Court object to the configuration of the districts under one-person one-vote and Section 2. In addition, the Department of Justice objected to District 41 in Hidalgo as violating Section 5. In Hidalgo, the State attempted to protect a Republican representative in District 41 by moving over 90% of his constituents out of his district, and under- populating the new District 41 by 7,399 persons, while adjoining Districts 36 and 40 were respectively overpopulated

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[21] Census data can be viewed at http://factfinder.census.gov. Specifically, the Latino population in Killeen increased by 13,876 and the Black population increased by 19,339, while Anglo population decreased by 17,903.

by 4,368 and 5,856. District 39 also is over 7,700 overpopulated in the enacted plan. In addition to the population deviations, the Department of Justice alleges that the substantially reconfigured District 41 no longer allows Latinos the ability to elect the candidate of their choice and therefore causes retrogression. Thus, both the Court map and the dissent map returned Hidalgo County to its configuration in the benchmark with as few changes as possible, shedding any new population into the new District 35.

In Bexar County, District 117 is objected to by the Department of Justice in the D.C. Court as violating Section 5. The Department alleges that the State intentionally reconfigured the district in an effort to trade out mobilized Hispanic voters for Hispanic voters who do not regularly vote. The Department of Justice argues that as a result of the swap, the performance of statewide candidates preferred by Hispanic voters decreases from 60 percent in District 117 in the benchmark plan to 33 percent in the enacted plan. As explained in the Court's November 23, 2011 order, the Court's map returns District 117 to its original performance under the benchmark in order to maintain the status quo until the D.C. Court rules. Further, because District 117 was the only challenged district in Bexar County, the Court endeavored to alter as few of the uncontested surrounding districts as possible.

The dissent argues that this Court improperly used election analysis "as a crystal ball to predict how future elections will turn out," when Section 2 only requires "equality of opportunity, not a guarantee of electoral success." Dkt No. 528, at 22-

23. However there is no Section 2 challenge to District 117, only a Section 5 challenge in the D.C. Court. It is not for this Court to determine whether election retrogression analysis is an appropriate legal standard under Section 5; rather, the D.C. Court has exclusive jurisdiction over that issue. *U.S. v. Bd. of Sup'rs of Warren County*, 429 U.S. at 645 ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General- the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color.'").

The remaining challenged districts are District 26 in Fort Bend and District 77 in El Paso. The Court provided an explanation for how it drafted those districts in its November 23, 2011 order.

In sum, the Court crafted a map that gave effect to as much of the policy judgments in the Legislature's enacted map as possible.[22] Although the Court believes that the application of *Upham* deference prior to preclearance defies the plain language of the Voting Rights Act, the legislative intent behind Section 5, existing Supreme Court precedent, and numerous practical realities, the Court concludes that even if *Upham* deference was required at this stage of the proceedings, the Court provided as much deference as possible without

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[22] By the State's own admission, 72 of the districts in the Court plan are substantially similar to the enacted plan. Sup. Ct. Emergency App. at 2, n. 1.

making merits determinations that are beyond the Court's jurisdiction.[23]

IV.

Compliance with the Fourteenth Amendment

Both the State and the dissent have argued that the Court, in crafting a court drawn map, should not take any steps above and beyond what the Legislature took in trying to equalize population. However, there were numerous one-person one-vote challenges to the enacted map.[23] Moreover, as noted above, exigent circumstances required that the Court make changes to uncontested districts in order to ensure whole VTDs.

The Supreme Court has "tolerated" somewhat greater population deviation in a legislatively drawn plan than it would in a court drawn plan. *McDaniel v. Sanchez*, 452 U.S. at 138. Unless there are persuasive justifications, a court drawn plan "must

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[23] Even if three judge courts were required to give *Upham* deference in some cases involving interim maps, under the Supreme Court's decision in *Abrams v. Johnson* that deference is still not appropriate in cases such as this, where "the constitutional violation [] affects a large geographic area of the State because any remedy of necessity must affect almost every district." 521 U.S. 74, 86 (internal quotations omitted).

[23] The following parties have asserted one person, one vote challenges to the State's enacted House plan (not merely certain districts therein), as reflected in their pleadings: (1) MALC (second amended complaint, Dkt. No. 50); (2) Perez plaintiffs (third amended complaint, Dkt. No. 53); (3) LULAC (first amended and supplemental complaint, Dkt. No. 78); and (4) NAACP (amended complaint, Dkt. No. 69).

ordinarily achieve the goal of population equality with little more than de minimis variation." *Connor v. Finch*, 431 U.S. 407, 414 (1977) (quoting *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975)). Thus, this Court strived to achieve *de minimis* population deviation in its independent court drawn plans in order to comply with the one person, one vote principle embodied in the Equal Protection Clause of the Fourteenth Amendment. The population variations that remain in the Texas House plan are the result of the Court's goal of avoiding cuts in county lines, precincts and VTD's.[24]

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[24] Based on information provided by the Texas Legislative Council:

In plan H302, the Texas House plan, the average deviation is 1.81% and there are 24 county line cuts (compared with 24 county line cuts in the State's enacted plan); 19 precinct cuts (compared with 422 precinct cuts in the State's enacted plan); and eight VTD cuts (compared with 412 VTD cuts in the State's enacted plan).

In plan C220, the court-drawn congressional plan, the average deviation is .02%. The court drawn plan contains 23 county line cuts (compared with 33 county lines cuts in the State's enacted plan); ten precinct cuts (compared with 520 precinct cuts in the State's enacted plan), and three VTD cuts (compared with 518 VTD cuts in the State's enacted plan).

With the astronomical number of precinct and VTD cuts in the State's enacted plan (and thus, by implication, the dissent's proposed plan), the dissent's assertion that the court drawn plans, rather than the State's enacted plans, will escalate costs and result in delays in the redrawing of precinct lines doesn't hold water.

IV.

Compliance with the Voting Rights Act

Court drawn redistricting plans must comply with Section 2 of the Voting Rights Act, which prohibits any voting procedure that results in a denial or abridgement of the voting rights of any citizen on account of race, color, or membership in a language minority. 42 U.S.C. § 1973(a). "A violation of § 2 is established by showing that 'based on the totality of the circumstances,' members of a protected class 'have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.'" *Smith v. Clark*, 189 F. Supp. 2d at 534. The Court's plans must also comply with Section 5 of the Voting Rights Act, which means that the plan cannot diminish the ability of minority voters to elect their preferred candidate of choice. 42 U.S.C. § 1973c(b). The core question under the Voting Rights Act is whether minority voters are worse off under the new plan, in comparison with the benchmark plan. *Beer v. United States*, 425 U.S. 130, 140-42 (1976). Under the court drawn plans H302 and C220, the Court is confident that the answer is "No."

The Court has explained how it drew the Congressional districts, and will not digress into the same discussion about C220. *See* Dkt. No. 544. However, the dissent seems concerned that the majority somehow did "too much" in the Texas House plan in an effort to comply with the Voting Rights Act, so the Court will discuss the Texas House map in more detail.

As previously mentioned, the Court set out to preserve all fifty (50) minority opportunity districts as they existed in the benchmark plan for the Texas House of Representatives. The Court also sought to avoid the legal challenges that had been made to the State's enacted plan. In drawing the map to meet these goals, the Court stayed as close to benchmark configuration as possible, while accounting for population growth. The Court drew the districts as reasonably compact as possible, rather than fracturing them. In applying these principles, it was relatively easy to preserve the existing minority districts and avoid the challenges that had been made to the State's enacted map. In fact, it became clear that a map drawer must go out of his way to fracture some of the districts in the manner reflected in the State's enacted map. *See* Dkt. No. 528, p. 8 (illustrations of HD 77 - the "antlers") and p. 11 (illustrations of HD 26 - the "faucet"). By keeping the districts reasonably compact, respecting the population in the districts, and keeping them close to benchmark, the Court was able to draw a map that rose above the type of challenges lodged against the State's enacted map.

After the entire map had been drawn, the Court did not know how many minority opportunity districts existed in its map. With the assistance of staff at Texas Legislative Council (TLC), the Court reviewed the relevant REDAPPL reports, including but not limited to the RED 202 report, which reflects voter registration and turnout, and an additional report prepared specially for the Court, which reflects citizen voting age population by race and ethnicity. To the extent possible, and with the

assistance of TLC, the Court also analyzed the districts in its map under the criteria used by the United States' expert, Dr. Handley and an additional index calculated by the office of the Attorney General. *See* Dkt. No. 79, Dr. Lisa Handley's House Analysis, Exh. 4, filed in *State of Texas v. United States*, Civil Action No. 11-CV-1303, in the District Court for the District of Columbia. With this analysis, the Court was able to confirm that it had preserved the 50 pre-existing minority opportunity districts, which included 33 Hispanic majority minority districts, 12 African-American majority minority districts, and five coalition districts. *See id.* The Court was also able to confirm, with relative certainty, that three additional districts would likely perform as minority opportunity districts. Those districts included House District 78 in El Paso County, a Hispanic majority minority district; District 144 in Harris County, an African-American majority minority district, and District 107 in Dallas County, which may be described as a coalition district. There is nothing to support a finding that minority voters in Districts 26, 54 and 149 will have the ability to elect their candidate of choice, and those districts cannot be described as minority opportunity districts. Thus, with 50 pre-existing minority opportunity districts and three additional districts that can be described as minority opportunity districts, the majority's court drawn plan includes 53 minority opportunity districts (one more than the dissent's proposed map). The Court can comfortably conclude that minorities are not worse off under the court drawn plan for the Texas House of Representatives, and it has successfully

complied with Sections 2 and 5 of the Voting Rights Act.

Conclusion

This Court cannot predict or control the outcome of any elections, nor can it control or predict how the D.C. Court may rule on any preclearance issues. The Court's authority at this juncture is limited to drawing a court-ordered redistricting plan, and the Court has been very constrained in exercising that authority.

SIGNED by the majority of the Court this 2nd day of December, 2011.

/s/
ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/
XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

For the reasons given in my dissent, I continue respectfully to disagree with the majority's ill-advised, though well-intentioned, imposition of an interim redistricting plan for the Texas House of Representatives.

The majority's newly-revealed zeal to press for sweeping relief at this interim stage of the case is unseemly at best and downright alarming at worst. The majority concedes that its order implementing the plan is on appeal. Its statement in the now-appealed order, to the effect that it would file a supplemental opinion, does not change the fact that

the order is already in the good hands of the Supreme Court.

This "Supplemental Opinion" has the smell of a brief on appeal. That is not the role of a trial court. It would be equally inappropriate for me now to point out the flaws in this latest submission. The talented attorneys on each side are fully capable of explicating the legal issues that will be considered, and if the Supreme Court needs further explanation from this three-judge district court, it will ask. If the majority feels insecure in the justification it gave in its initial offering, that is the stuff of appellate briefing by the parties' attorneys, not judges and their law clerks.

In my almost twenty-four years as a judge on the court of appeals, I cannot recall ever seeing an unsolicited "supplemental opinion" come flying over the transom from a district judge desperate to lend further support for a shaky decision. We are judges, not advocates.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/27/11
Document 546

ORDER

Defendants' motion to stay implementation of the court-drawn interim congressional redistricting plan pending appeal (Dkt. No. 545) is DENIED for the reasons given in this Court's Order dated November 26, 2011 (Dkt No. 544). As stated in that Order, when there is no other legally enforceable plan in effect, this Court is required to craft an independent court-drawn interim map. The State has misinterpreted the applicable case since the inception of the interim court plan process. The State insists that the Court must simply adopt its enacted unprecleared plan, making only minimal changes, if any, to "remedy" any constitutional or statutory violations. The State continues to rely on *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982), which is clearly inapposite to the situation that the Court faces herein. In *Upham*, the district

court was faced with drawing a remedial plan after preclearance of the State's enacted plan had been denied. In the remedial phase, under *Upham*, the district court's task would be limited to remedying the portions of the map known to be retrogressive or otherwise violating the Voting Rights Act or the U.S. Constitution. Had the State chosen the path of administrative preclearance through the Department of Justice, we would perhaps be in the remedial phase right now. However, the State chose to file a lawsuit in the United States District Court in the District of Columbia, which is still pending, and we are not in the remedial phase. Instead, we are in an interim phase where the Court has been placed in the position of crafting an independent court drawn plan that complies with the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act. In doing so, the Court is precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan. *See Lopez v. Monterey County*, 519 U.S. 9, 117 S.Ct. 340 (1996)(district court erred when it failed to independently craft an electoral plan and instead adopted the County's proposal, which required preclearance); *see also McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224 (1981)(district court erred in adopting the County's plan, which required preclearance). It is undisputed that the "failure to obtain either judicial or administrative preclearance renders the [voting] change unenforceable," *Clark v. Roemer*, 500 U.S. 653, 111 S.Ct. 2096, 2101 (1991), and the Court

cannot simply adopt an unprecleared redistricting plan, in whole or in part, with the signatures of a few judges sitting in Texas.

Further, the Court's order is not akin to a preliminary injunction as the State suggests. The only request for injunctive relief that has been raised in this lawsuit is the plaintiffs' request that the State's enacted plan be enjoined from implementation because it has not been precleared. *See Clark*, 111 S.Ct. at 2101 (if there has been no preclearance, plaintiffs are entitled to an injunction prohibiting the State from implementing the changes). However, since the inception of this lawsuit, the State has admitted that its enacted plan must be precleared prior to implementation. Yet it has persisted in trying to avoid preclearance altogether by demanding that its unprecleared plan be adopted by the Court as an interim court drawn plan. Again, the dictates of the U.S. Supreme Court preclude this Court from doing so.

The dissent has somewhat embraced the State's arguments, and also relies on *Upham*, even though this Court has not arrived at the remedial stage of these proceedings. Likewise, the dissent tries to distinguish *Lopez* based on the procedural posture of the preclearance proceedings in this matter. However, there was no preclearance in *Lopez* and there is no preclearance in this case. At the end of the day, no preclearance means no preclearance, and no enforceable plan. The dissent also fails to appreciate that the Court has drawn an independent redistricting plan without ruling on any of the various legal challenges, and it has considered the parties' legal challenges only for the purpose of

avoiding the same legal challenges to the court drawn map. *See Conner v. Waller*, 421 U.S. 657, 95 S.Ct. 2003 (1975)(the district court cannot decide the constitutional challenges to the challenged, unprecleared plan). The Court's congressional plan clearly rises above the myriad of challenges to the State's enacted plan and allows a free and fair election in 2012.

In conclusion, the State claims that it will be irreparably injured if a stay is not granted. However, the individuals who would suffer irreparable injury if the stay were granted are the citizens of Texas, by being deprived of the opportunity to vote in the upcoming election under the schedule currently in place.

SIGNED this 27th day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

Because a stay of the orders implementing interim plans for the 2012 elections is needed to allow orderly review and clarification of critical legal issues, and because a stay will not harm any party, I respectfully dissent from the denial of a stay. In its order announcing an interim redistricting plan for the Texas House of Representatives, the majority acknowledged that "these are difficult issues and

reasonable minds can disagree." It is therefore puzzling that the majority is unwilling to stay its order so that those difficult issues can be addressed on appeal before the announced interim plans are implemented.

There are myriad issues to be decided regarding interim, court-ordered redistricting plans. Because these matters are usually raised only in the wake of the decennial census, the caselaw is somewhat sparse and often murky. Questions that are not addressed now, before any part of these interim plans are implemented, might not be answered for yet another ten years or more. That is why the more orderly course is for this court to stay its proceedings, before filing 5 for office begins in Texas on November 28, so that the Supreme Court will have sufficient time to address the complex legal issues that apply to interim plans.

Here are the issues most begging for resolution or explication:

1. In fashioning a temporary interim redistricting plan, how much deference should a court give to state-enacted legislative plans where a determination for preclearance has been submitted but is pending in: (1) districts that have not been specifically challenged; (2) districts that have been challenged under novel legal theories; (3) districts that have been challenged but as to which the challenges are unlikely to succeed on the merits; and (4) districts that have been challenged where the claims have a likelihood of success on the merits? In *Upham v. Seamon*, 456 U.S. 37 (1982), the Court directed lower courts to modify a state's legislative

plans only where absolutely required by law in a situation in which a determination on preclearance had been made and two of the districts in the State's plan had failed preclearance. *See also White v. Weiser*, 412 U.S. 783, 794-95 (1973). In contrast, the Court in *Lopez v. Monterey County*, 519 U.S. 9 (1996), rejected a lower court's wholesale implementation of a county's plan as an interim plan where the county had failed even to submit the plan for preclearance, defying a court order and despite being on notice for five years.

The instant case falls somewhere in between the situations in *Seamon* and *Lopez*: The State of Texas here has not attempted to frustrate or obviate the preclearance process but instead has timely submitted its maps to the D.C. District Court (unlike the county in *Lopez*), but the D.C. court has not yet ruled on preclearance (unlike the Department of Justice in *Seamon*, which had ruled on preclearance). Although the majority, as to the Texas House of Representatives, contends that the many challenges to the State's plan makes it "impossible to give substantial deference to the State's plan," the very existence of my proffered alternative plan, H299, shows that it is possible to give more deference than the majority did while still taking the plaintiffs' challenges seriously. It would be of greater assistance for the Supreme Court to provide guidance on this issue.

2. In a court-ordered interim plan, how much population deviation is permissible in districts unchallenged by the plaintiffs or districts without meaningful one-person one-vote issues? The majority, relying on *Connor v. Finch*, 431 U.S. 407,

414 (1977), modified the State's enacted districts to bring them into *de minimis* deviation, even in districts unchallenged by the plaintiffs.

In contrast, my map left the unchallenged districts, which had population deviations within the legally permissible range for legislatures (but were not *de minimis*), intact, in accordance with the guidance given in *Seamon*, which held that the stricter *Connor* standard cannot be the sole basis for modifying a state's redistricting, but instead is applicable only where a specific violation was found and a remedial district was being drawn. *Seamon*, 465 U.S. at 43.

3. For purposes of section 2 and section 5 of the Voting Rights Act, is election "performance" relevant or, or instead is the relevant measure the percentage of citizen voting age population? The majority redrew Districts 77 (in El Paso County) and 117 (in Bexar County) because, under, the State's plan, the district does not "perform" often enough (*i.e.*, it was likely to elect a Republican) despite Hispanics' comprising an overwhelming majority of the citizen voting age population in those districts (73% and 63%, respectively). In contrast, I read the section 2 caselaw to say that performance is not a relevant measure, *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994), but rather the relevant measure is the majority-minority requirement, *Barlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1244-45 (2009).

I have not found, nor has the majority cited, any caselaw to the contrary. That said, there is little to no guidance about whether a court should consider

performance in a section 5 retrogression or discriminatory intent analysis, so it would be helpful for the Supreme Court to provide clarity on this question.

4. May a court order the creation of minority "coalition" districts in an interim plan, and, if so, under what circumstances? Though the Court in *Bartlett* rejected the contention that "cross-over" districts are covered by section 2, some of its language calls into question whether "coalition" districts are similarly covered (although the Court did expressly reserve the question). The majority created such coalition districts in Dallas County (HD 107), Fort Bend County (HD 26), and Bell County (HD 54). Districts 26 and 54 relied on Asian votes to form a "coalition," despite the lack of evidence showing cohesion between Asians and Blacks or Hispanics in voting.

Though the majority contends these new coalition districts arose "naturally" from a restoration to the *status quo*, it is hard to see how that could be the case: For example, HD 107 was substantially reconfigured from the *status quo* (composed of less than 40% of HD 107 in the benchmark plan) to exclude Anglo voters and include minority voters, reducing the Anglo citizen proportion by 33%. Similarly, Districts 26 and 54 were altered from the *status quo* by removing almost exclusively white populations instead of reducing the population in a race-neutral manner. Although my proposed alternate plan creates a new coalition district in Tarrant County, it is the identical new district created by the State (and dismantled by the majority), and the State has unquestionable latitude

to create such districts so long as it does not subordinate traditional redistricting principles to race.

The lack of clarity regarding coalition districts is evidenced by a circuit split on whether they may ever be required. The Fifth Circuit has treated the question as one of fact, holding that it is not clearly erroneous for a district court to find the first Gingles requirement satisfied by aggregating minority groups to reach the 50% threshold. *See Campos v. City of Baytown, Tex.*, 840 F.2d 1240 (5th Cir. 1988). The Sixth Circuit, however, has held that the text of the VRA does not allow its application to coalitions of minority groups. *See Nixon v. Kent Cnty.*, 76 F.3d 1381 (6th Cir. 1996). This issue cries out for clarification.

In its motion for stay, the State concedes that it may become necessary to delay the primary elections pending appellate review of issues regarding the interim plans. Indeed, Texas has some of the earliest primaries—perhaps the very earliest—in the United States. A delay of even a few weeks would still provide ample time for orderly primaries and runoffs well in advance of the November elections. But long before any such adjustment might become necessary, the first step should be for entry of a stay of this court's orders imposing interim redistricting plans for the Texas House of Representatives and the Texas Senate and, once this court imposes an interim Congressional plan, a stay of that order as well. Likewise, a temporary stay should be entered of candidate filing and qualifications deadlines for all elective offices so that filing does not begin on November 28.

The majority's refusal to enter a stay under these compelling circumstances is error. I therefore respectfully dissent.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/26/11
Document 544

ORDER

The court adopts PLAN C220 as the interim plan for the districts used to elect members in 2012 to the United States House of Representatives. A map showing the redrawn districts in PLAN C220 is attached to this Order as Exhibit A. The textual description in terms of census geography for PLAN C220 is attached as Exhibit B. The statistical data for PLAN C220 is attached as Exhibit C. This plan may be also viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Court-ordered interim plans." Additional data on the Court's interim plan can be found at the following website maintained by the Texas Legislative Council under the "Announcements" banner: http://www.tlc.state.tx.us/redist/redist.htm.

The Court thanks the staff at the Texas Legislative Council for their assistance in preparing this map.

This interim map is not a ruling on the merits of any claims asserted by the Plaintiffs in this case, any of the other cases consolidated with this case, or the case pending in the United States District Court for the District of Columbia.

Background

The decennial census was conducted last year, pursuant to Article I, § 2 of the United States Constitution. The census data showed that the population of Texas had increased from the 2000 population of 20,851,820 to 25,145,561 for 2010, an increase of about 20.6%.[1] It is undisputed that minority population growth, especially in the Hispanic community, accounted for much of the population increase. Specifically, the Hispanic population in Texas grew by 2,791,255 and the African-American population grew by 522,570, while the Anglo population increased by fewer than 465,000 people.[2] The population changes mean that the current congressional districts are malapportioned and in violation of the one-person, one-vote principle,[3] and the population increase

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[1] http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf

[2] Texas State Data Center: http://txsdc.utsa.edu/Data/Decennial/2010/Redistricting/Profiles.aspx

[3] *See Connor v. Finch*, 521 U.S. 74, 98 (1977) (the constitutional guarantee of one person, one vote requires congressional districts to achieve population equality "as nearly as is practicable") (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)).

entitles the State of Texas to four additional seats in the House of Representatives. Thus, the State of Texas undertook redistricting efforts to reapportion seats. See U.S. CONST. ART. I, § 2.

The 82nd Texas Legislature, during a special session, enacted S.B. 4 on June 24, 2011. Governor Rick Perry signed the bill into law on July 18, 2011. The State's enacted plan drew one new minority opportunity district – district 35 – along the I-35 corridor between Travis County and Bexar County, but drew no other additional minority opportunity districts.

A number of constitutional and statutory challenges have been asserted against the State's enacted map. Plaintiffs assert that the State failed to draw additional required minority opportunity districts in the Dallas-Fort Worth metroplex, the Houston area, and West/South Texas, despite the substantial minority population growth there and satisfaction of the requirements for drawing such districts under Section 2 of the Voting Rights Act. Plaintiffs allege that the State racially gerrymandered districts to avoid drawing new minority opportunity districts. Plaintiffs further complain that the State intentionally weakened district 23, a minority opportunity district, to protect a Republican incumbent, and that the new configuration of district 27 dilutes Hispanic voting strength. In addition, the Rodriguez Plaintiffs complain that the enacted map intentionally dismantled a functioning "tri-ethnic coalition" district in Travis County.

Plaintiffs further challenge and seek to enjoin implementation of the State's enacted plan under Section 5 of the Voting Rights Act because it has not received preclearance. It is undisputed that Texas, as a jurisdiction with a history of racial discrimination in voting, is subject to the preclearance requirements of Section 5 of the Voting Rights Act, as amended and codified at 42 U.S.C. § 1973c.[4] Until a legislative plan obtains such preclearance, it cannot be effective as law and cannot be implemented.[5]

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[4] As the Supreme Court observed in its recent opinion concerning prior redistricting efforts in Texas, "The District Court recognized 'the long history of discrimination against Latinos and Blacks in Texas,' and other courts have elaborated on this history with respect to electoral processes:

> 'Texas has a long, well-documented history of discrimination that has touched upon the rights of African–Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history. The history of official discrimination in the Texas election process—stretching back to Reconstruction—led to the inclusion of the State as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act. Since Texas became a covered jurisdiction, the Department of Justice has frequently interposed objections against the State and its subdivisions.'"

LULAC v. Perry, 548 U.S. 399, 439-40 (2006) (citations omitted).

[5] *Clark v. Roemer*, 500 U.S. 653, 646 (1991) (failure to obtain either judicial or administrative preclearance renders the voting change unenforceable); *see also White v. Lipscomb*, 437 U.S. 535, 542 (1978) ("A new reapportionment plan enacted by

The Stated filed a lawsuit to obtain preclearance of its enacted plan on July 19, 2011, and that suit is currently pending before a three-judge court in the United States District Court for the District of Columbia (hereinafter "the D.C. Court").[6] In that lawsuit, the State of Texas has asked the D.C. Court to declare that the enacted plan complies with Section 5 of the Voting Rights Act, meaning that it "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color" and that it may be implemented.[7] The State of Texas moved for summary judgment on its preclearance request on September 14, 2011.[8] After receiving briefing and hearing oral argument, the D.C. Court denied the motion for summary judgment on November 8, 2011.[9] The D.C. Court's order states the following:

> Having carefully considered the entire record and the parties' arguments, the Court finds and concludes that the State of Texas used an improper standard or methodology to determine which districts

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a State . . . will not be considered 'effective as law' until it has been submitted and has received clearance under § 5. Neither, in those circumstances, until clearance has been obtained, should a court address the constitutionality of the new measure.") (citations omitted).

[6] *State of Texas v. United States of America & Eric Holder*, Civ. A. No. 1:11-CV-1303 (D.D.C.).

[7] *Id.*, docket no. 1 (Original Complaint) at ¶ 48.

[8] *Id.*, docket no. 41 (Motion for Summary Judgment).

[9] *Id.*, docket no. 106 (Order on State's Motion for Summary Judgment).

> afford minority voters the ability to elect their preferred candidates of choice and that there are material issues of fact in dispute that prevent this Court from entering declaratory judgment that the three redistricting plans meet the requirements of Section 5 of the Voting Rights Act. *See* 42 U.S.C. 1973c.

Texas v. United States, Civ. A. No. 1:11-CV-1303 (D.D.C.), docket no. 106 (Order on State's Motion for Summary Judgment) at 2. The D.C. Court further noted that, without preclearance, this Court "must designate a substitute interim plan for the 2012 election cycle by the end of November." *Id.* This Court is therefore faced with the "unwelcome obligation of performing in the legislature's stead."[10]

Discussion

In drawing this Congressional map, all proposed maps, including the State's enacted map, were considered.[11] The Court sought to create a plan that maintains the status quo pending resolution of the preclearance litigation to the extent possible,

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[10] *Connor v. Finch*, 431 U.S. 407, 415 (1977); *White*, 437 U.S. at 542 ("Pending such [Section 5] submission and clearance, if a State's electoral processes are not to be completely frustrated, federal courts will at times necessarily be drawn further into the reapportionment process and required to devise and implement their own plans.").

[11] *Smith v. Cobb County*, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) ("That a court must not act as a rubber stamp does not mean, however, that the court cannot consider the proposed legislative plan, just as it considers any other plans submitted to it.")

complies with the United States Constitution and the Voting Rights Act, and embraces neutral principles such as compactness, contiguity, respecting county and municipal boundaries, and preserving whole VTD's.[12] The Court also sought to balance these considerations with the goals of state political policy.

Although a court-drawn plan is not subject to Section 5 preclearance, "in fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases."[13] The purpose of Section 5 "has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[14]

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[12] Of course, population changes and the need to draw four new districts required altering the status quo to some degree. The Court notes that all population shifts were done in terms of VTD's. A "VTD" is a voter tabulation district and is the functional equivalent of a voting precinct. The Court minimized splits to VTD's and precincts as much as possible. *See Vera v. Bush*, 933 F. Supp. 1341, 1347 (S.D. Tex. 1996) ("Moreover, the Court's remedial plan addresses the single most troubling and realistic hurdle, the potential splitting of voter tabulation districts ('VTD's'), by avoiding that consequence in all but a small handful of voting precincts.").

[13] *Abrams v. Johnson*, 521 U.S. 74, 95-96 (1997) (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981)). This exception applies to judicial plans devised by the Court, and thus this Court is not permitted to simply implement the Legislature's enacted plan because it has not received preclearance. *See Abrams*, 521 U.S. at 95.

[14] *Id.* (quoting *Beer v. United States*, 425 U.S. 130, 141 (1976)).

It is undisputed that the appropriate benchmark for determining retrogression under Section 5 is the plan currently in effect. Thus, to comply with Section 5 by ensuring that no minority voters suffer a retrogression in their voting strength as compared to the benchmark and to generally maintain the status quo pending resolution of the preclearance litigation in the D.C. Court, the Court aimed to maintain the current minority opportunity districts from the benchmark plan. The Court accomplished this goal with regard to the existing districts in Houston and Dallas, but large population changes and the need to draw four additional districts nevertheless required significant changes in other districts.

In accordance with the goal of maintaining the status quo and avoiding retrogression, districts 9, 18, and 29, the three existing minority districts in the Houston metropolitan area, were drawn as they are in the benchmark, with only the necessary modifications to account for population inequality.[15]

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[15] Excess population was moved out of districts 9 and 18. 14,785 people were moved from district 9 to district 7, and 420 people were moved from district 9 to 22. No people were moved into district 9, and no people were moved out of district 29. 21,421 people were moved from district 18 into district 29, and 1,212 people were moved from district 18 into district 2. No people were moved into district 18.

In its objections, the State asserts that the Court has reduced the number of African-American plurality districts because the Hispanic voting age population (38%) in district 9 would slightly exceed the African-American voting age population (37%). However, the African-American *citizen* voting age population ("CVAP"), which is the relevant measure for voting opportunity, still largely exceeds the Hispanic voting age

Because drawing an additional district in the Houston metropolitan area would have significantly upset these districts rather than maintain them, the Court elected to draw new districts 34 and 36 around Houston to reflect population growth, as the Legislature did, while keeping districts 9, 18, and 29 substantially unchanged from the benchmark and drawing districts 2, 22, and 14 similar to the enacted plan.[16]

Thus, as noted, the placement and configuration of the Court's new districts 34 and 36 are similar to the placement of two new districts in the Legislature's enacted plan. New district 36 closely resembles the Legislature's enacted district 36 geographically, and there is a 76.7% population overlap. Much of the difference between the Court's plan and the enacted plan is attributable to maintaining district 29 as in the benchmark to avoid retrogression and maintain the status quo.[17]

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population in district 9 – African-American CVAP is 49% and Hispanic CVAP ("HCVAP") is 18.8%.

[16] The Court could have drawn a new district in the Houston metropolitan area based on population growth and pushed the existing districts outward. However, the Court chose the less disruptive route of maintaining the current districts as much as possible. This choice also resulted in more overlap between the Court's plan and the State's enacted plan. For example, district 2 in the Court's plan has a 73% population overlap with the enacted plan; district 22 has a 84.9% population overlap; and district 14 has a 97.2% population overlap.

[17] The addition of district 36 necessarily pushed former district 8 to the west and accounts for most of the change to that district.

The Court's placement of new district 34 is also similar to the Legislature's placement of a new district, labeled 27 in the enacted map. The Legislature took what was previously district 27, removed Nueces County and extended the district to the North, renaming it district 34. District 27, which was actually the new district in the State's enacted map, was placed between Houston and Austin to the south of district 10, the same general area in which the Court has placed its new district 34.[18] By creating the new district 34 that extends north, the Court was able to restore district 27 to its benchmark configuration as a South Texas district, extending south from Nueces County with Cameron County as its anchor at the border.

Further consistent with Section 5 and the goal of maintaining the status quo, existing Latino opportunity districts in South and West Texas[19] were generally drawn with their benchmark configurations as a starting point, but due to population changes and the addition of new districts 34 and 35, significant changes were necessary.

To begin, district 16 in the El Paso area was overpopulated, and that excess population (58,937 people) had to be moved into district 23 to the east

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[18] District 10 was pushed somewhat north as a result of the addition of district 34. District 17 was kept substantially similar to benchmark.

[19] Districts with HCVAP in excess of 50% included districts 15 (South Texas), 16 (El Paso), 20 (San Antonio), 23 (Southwest Texas), 27 (South Texas), and 28 (South Texas).

because it is the only adjoining district.[20] As discussed below, this population shift, the addition of new districts, and other changes in Central and South Texas resulted in more significant changes to district 23.

Further, it is undisputed that much of Texas's overall population growth occurred in Bexar County and Travis County and areas along the I-35 corridor. Even the Legislature's enacted map placed a new minority opportunity district in that area. Accordingly, consistent with the Legislature's choice to create a new Latino opportunity district and with its general choice of location in the enacted plan, the Court drew new district 35 as a Latino opportunity district, anchored in Bexar County and generally extending northeast along the I-35 corridor to reflect the population growth in that area.[21]

Southern Bexar County was removed from district 23 to accommodate the creation of new district 35. This was a very large population loss for district 23 (269,784 people), which was largely offset with population from district 20. Further, district 23 was extended to the east into Frio and LaSalle Counties, as well as to the north into Loving, Winkler, Ward, Crane, Upton, Reagan, and

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[20] Although objections have been raised to the fact that the City of El Paso is split in the Court's map, the Court notes that the City of El Paso is also split in both the State's enacted map and C216, the map proposed by the dissent (though to a lesser degree).

[21] District 35 includes Atascosa County, southern Bexar County, parts of Guadalupe, Comal, and Hays County along I-35, and Caldwell County.

Schleicher Counties, and Sutton County was united into district 23.

Despite the significant changes to district 23's population, the Court sought to maintain its demography and election performance at the benchmark levels in keeping with the principle of maintaining the status quo.[22] The State contends that the Court has decreased the performance of district 23, but the Court respectfully disagrees. Reports run by the Texas Legislative Council for the Court in preparing the map and in response to the State's comments demonstrate that district 23 maintains its benchmark performance level. Further, although the dissent apparently accepts the State's position that the performance of CD23 has declined, he argues that "the court redraws the district to ensure that it qualifies as a Latino opportunity district, relying on 'performance' (*i.e.*, probability of electing a Democrat) rather than HCVAP as the factor defining a Latino opportunity district." However, the Court has not relied on performance to define this or any other Latino opportunity district. Rather, the Court has maintained the HCVAP in district 23 above 50% and close to benchmark levels, without decreasing the percent of Spanish-surname voter registration ("SSVR") and without lowering performance.[23] This

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[22] District 23 has only a 61.2% population overlap with its benchmark population.

[23] In the benchmark, district 23 was 62.8% Hispanic VAP, 58.4% HCVAP, and 52.0% 23 SSVR, and the Court's district 23 is 62.6% HVAP, 57.3% HCVAP, and 52.2% SSVR. The Texas Latino Redistricting Task Force recognizes in its comments that "[t]he district provides Latino voters the same opportunity

is consistent with the Court's goal of generally maintaining the status quo. The Court has nowhere expressly sought to increase the performance of any opportunity district above benchmark. Nor has the Court engaged in partisan gerrymandering as suggested.

The significant population growth in the northwestern part of district 25, anchored in Travis County, allowed that district to be pulled back from its benchmark configuration to the northwest in Travis County and western Hays County. This in turn allowed Caldwell and eastern parts of Hays County to be placed into the new district 35. Further, this pulling back of district 25 allowed Bastrop, Fayette, Gonzales, Lavaca, and Colorado Counties to be placed into the new district 34.[24]

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to elect the candidates of their choice that they had in the benchmark plan." Docket no. 537.

[24] The Court makes no ruling on the merits of the Rodriguez Plaintiffs' claims based on the intentional dismantling of the "tri-ethnic" coalition (based in Travis County) in district 25. The Court acknowledges that Section 2 of the Voting Rights Act does not mandate preserving crossover districts. *Bartlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1248 (2009) (Kennedy, J.). However, preservation of such an already existing district by the Court when drawing an interim plan is certainly permissible. Further, under the more stringent requirements of Section 5, the presence of such districts is relevant for the Section 5 retrogression analysis. *See id.* at 1249 (citing *LULAC v. Perry*, 548 U.S. 399, 446 (2006) (Kennedy, J.) (noting that the presence of districts "where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process" is relevant to the Section 5 analysis). In keeping with the goals of maintaining the status quo and complying with Section 5 in

The downtown core and much of the population from the existing Latino opportunity district 20 was maintained, but as noted, a significant part of its western population was shed into district 23 to offset district 23's loss of southern Bexar County. Further, 29,922 people were moved from district 20 into the new district 35. In addition, district 20 was pushed a little to the north and picked up population from district 21. Despite its population changes, district 20 maintains its character as a performing Latino opportunity district.[25]

The creation of districts 34 and 35 affected the South Texas districts (15, 27, and 28) to some degree, but they were maintained as close to benchmark as possible. District 27 was maintained very closely to benchmark geographically, although Cameron County was united into district 27, while part of Nueces County was removed and placed into the new district 34. District 27 derives 86.2% of its population from its prior population, and maintains its character as a performing Latino opportunity district.

District 15, which derives 85% of its population from its prior population, is narrowed. It no longer extends into Cameron County and swaps out some portions of Hidalgo County with district 28. Further, Duval County, Live Oak County, Karnes County, and Dewitt County were moved from the western

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drawing this map, the Court has preserved district 25 as a crossover district.

[25] District 20 pulls 76.8% of its population from its prior population.

part of district 15 into district 28. District 15 maintains its character as a performing Latino opportunity district.

District 28 no longer extends into Bexar County, since that population was placed into the new district 35, and, as described above, district 28 was generally shifted to the east. District 28 pulls 86.1% of its population from its prior district and maintains its character as a performing Latino opportunity district.

In the Dallas-Fort Worth area, to maintain the status quo and comply with Section 5, the Court maintained the current minority opportunity district in Dallas County – district 30 – at its benchmark configuration except to equalize population.[26] The Court kept the general shapes of surrounding districts 5, 6, 24, and 32 similar to the State's enacted plan. The fourth new district – district 33 – was drawn in the Dallas-Fort Worth metroplex to reflect population growth in that area. That is also generally where the Legislature added its new district 33, but the Court's new district 33 is more compact and located within Tarrant County, where the growth in urban population occurred.

Because much of the growth that occurred in the Dallas-Fort Worth metroplex was attributable to minorities, the new district 33 was drawn as a

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[26] District 30 draws 100% of its population from its prior population, while 7,763 people were moved from district 30 to district 6 to equalize population.

minority coalition opportunity district.[27] United States Representative (and House Judiciary chair) Lamar Smith suggested that the Legislature draw a new minority opportunity district in the Dallas-Fort Worth area. The State argues that the Legislature attempted to do so but was allegedly unable. According to 2010 census figures, African-Americans and Hispanics account for at least 41% of the current total population of Tarrant County, and accounted for approximately 77% of the population increase in the County between 2000 and 2010.[28] The creation of district 33 required changes to the surrounding districts, including pushing district 12 to the west.[29]

The Court notes that, after maintaining current minority districts and adding in the new districts, it inserted a number of districts with minimal change from the enacted plan where possible. These include districts 1, 3, 4, 5, 8, 11, 13, 14, and 19.[30] Thus, nine

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[27] African Americans and Hispanics account for approximately 60.7% of the voting age population and 50.5% of the citizen voting age population of new district 33.

[28] Census data can be viewed at http://factfinder.census.gov. In addition, the Texas State Data Center website shows that there are 482,977 Hispanics and 262,522 African-Americans (alone), and the total population of Tarrant County is 1,809,034. The African-American population numbers do not include persons of more than one race. This data can be viewed at: http://txsdc.utsa.edu/Resources/Decennial/2010/Redistrict/pl94-171/profiles/county/table2.txt

[29] With regard to complaints that the Court's map splits the City of Arlington, the City was split in the benchmark plan.

[30] Based on 2010 census data as shown in the Red-340 report, district 1 has a 97.2% population overlap with district 1 in the enacted plan. District 3 has a 97.8% population overlap with the enacted plan. District 4 has a 96.5% population overlap

of thirty-six districts (25% of the districts) are substantially similar to those in the enacted plan.

The dissent's comments come as some surprise to the Court, and are clearly a last-minute gathering of public comments that were submitted to the Court after the plan, to which the dissent agreed at the time, was released for comments and objections. Many of the dissent's comments do not appear to be based on any kind of independent analysis, and the dissent simply accepts each of the objections without any apparent verification or confirmation.

The dissent claims that plan C216 is a better redistricting plan because it is "bipartisan."[31] But plan C216 was largely driven by political ambition and raises various constitutional concerns. First and foremost, the map drawer for C216 testified that he used the State's unprecleared map as a template to draw the map even though the Department of

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with the enacted plan. District 5 has a 94% population overlap with the enacted plan. District 8 has a 92.7% population overlap with the enacted plan. District 11 has a 96.7% population overlap with the enacted plan. District 13 has a 98.6% population overlap with the enacted plan. District 14 has a 97.2% overlap with the enacted plan. District 19 has a 99.2% population overlap with the enacted plan.

[31] Calling the map "bi-partisan" goes a bit far. It was proposed by two members of Congress, a Republican and a Democrat, who both sought changes to their own districts. Some other members of Congress whose districts were slightly improved under C216 as opposed to the enacted plan supported C216 based on the improvements to their districts, but that does not mean that they supported C216 over other plans offered by the Plaintiffs, nor does it mean that they had any interest in C216's treatment of areas other than their districts.

Justice has claimed that the State's enacted map was drawn with discriminatory intent. Because plan C216 is largely based on the State's enacted plan, Plaintiffs have argued that it is, in essence, a legislative plan that should be subject to preclearance. *Lopez v. Monterey County*, 519 U.S. 9, 22, 117 S. Ct. 340, 348 (1996) ("[W]here a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction] . . . the preclearance requirement of the Voting Rights Act is applicable.")(quoting *McDaniel v. Sanchez*, 452 U.S. 130, 153, 101 S. Ct. 2224, 2238 (1981)). Plan C216 is a thinly disguised version of the State's unprecleared plan, which is challenged as being discriminatory in both purpose and effect.

The Court further notes that the new district 35 in plan C216, which purports to be a Latino opportunity district, has less than 50% HCVAP and therefore is not a Latino opportunity district. Despite the obvious inconsistency, the dissent criticizes the Court's map on the basis of LULAC's assertion that it dilutes Latino voting strength by not increasing the number of Latino opportunity districts, yet espouses adoption of a plan that creates *fewer* Latino opportunity districts than the Court's plan.

Summary

In sum, the Court has taken on the "unwelcome obligation" of drawing this interim plan solely because the State has failed to obtain the necessary preclearance of its enacted plan. In drawing an independent plan consistent with the Constitution and the Voting Rights Act, the Court nevertheless

utilized portions of the enacted map where it could do so, and placed the four new congressional districts consistent with population growth and in generally the same locations as the Legislature placed them. One of the new districts was drawn as a Latino opportunity district similar to the one created by the Legislature, and the other was drawn as a minority coalition district in Tarrant County based on the significant minority population growth occurring in the area.[32]

In other portions of the map, the Court sought to maintain the status quo and to avoid retrogression by maintaining the character of existing opportunity districts. Although the Court has not achieved absolute population equality, the population disparities are a result of both exigent circumstances (candidates will start filing for office on Monday, November 28, 2011) and a desire to avoid VTD and precinct cuts to facilitate the imminent election process with minimal delay and expense.[33]

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[32] Under the benchmark, there were 7 Latino opportunity districts, 3 African American opportunity/influence districts, and 1 crossover district (*i.e.*, 11 out of 32 districts). Although minority growth accounts for most of the growth in the State that has entitled Texas to four additional seats in the House of Representatives, the Court's map is conservative and draws only two additional minority districts out of the four. This reflects only a slight increase in the percentage of minority influence/opportunity districts – from 11/32 (34.4%) to 13/36 (36%).

[33] The Court's map splits only 3 VTD's. (Further, the Court's map splits 10 precincts, while C216 appears to have over 500 precinct splits). The Court notes that no Plaintiffs/voters have objected to the population disparities in the Court's map.

SIGNED on this 26th day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

I joined in the order submitting proposed interim Congressional Plan C220 for comment by interested parties. It was worthy of submission for that purpose and reflected a good deal of concentrated effort by this panel and Texas Legislative Council to fashion a map that is appropriate for an interim plan under the specific situation faced here, where the preclearance court in the District of Columbia has not yet acted and where this court has not made final decisions on the remaining statutory and constitutional issues that have been raised regarding Texas's congressional redistricting. Plan C220 is an honest and diligent effort to achieve what an interim plan should do, and I have considered it carefully in light of the comments and responses that have been received from the various parties.

After reviewing the comments to C220 that point out its statutory, constitutional, and policy deficiencies, I respectfully dissent from the imposition of it as an interim plan for the 2012 Congressional elections in Texas. A better plan is C216, the one submitted by a bipartisan pair of Congressmen seeking the sort of compromise that

was unsuccessful in the 2011 Legislature. That plan has the support of at least eleven current Members of Congress from Texas. Although far from perfect, it goes a long way toward achieving a fair and legally defensible plan for the 2012 elections.

Irrespective of the advantages and disadvantages of C216 or any of the other myriad plans submitted by the various parties, C220 suffers from at least the following infirmities:

1. Although the Department of Justice objected to only two districts in the State's enacted plan (C185), C220 changes all thirty-six districts from their configuration in C185 (some of them in only a minor way, I acknowledge).

2. District 27 is changed dramatically so that Nueces County will be the 18 largest county in Texas that does not control its own congressional district. Harris County will greatly outweigh Nueces County and will control District 34. Plan C220 also splits the Port of Corpus Christi into two districts. Lastly, C220's configuration of Nueces County would require using a boat to travel from the southern part of the district to the northern part without entering an adjoining district.

3. Plan C220 creates District 33 as a new "coalition" district, yet as even some of the plaintiffs recognize, there is no evidence of voting cohesion, heightened or otherwise, among Latino, Black, and Asian minority groups so as to justify creation of a coalition district, even if such districts could be created by a court. Latinos and Blacks do not vote cohesively in the Democratic primaries in the area of proposed District 33.

4. The proposed District 23 in C220 does not meaningfully improve the performance for Latino candidates: The Latino candidate of choice will be elected in only two of ten elections. The only permissible justification for a radical redrawing of District 23 would be to improve electoral chances, even assuming that any measure other than Hispanic Citizen Voting Age Population ("HCVAP") is an appropriate test. That purpose fails in C220.

5. In District 23, Plan C220 decreases the HCVAP from 58.5% in the enacted plan to 57.3%. Yet the court redraws the district to ensure that it qualifies as a Latino opportunity district, relying on "performance" (i.e., probability of electing a Democrat) rather than HCVAP as the factor defining a Latino opportunity district. Ironically, the court increases the "performance" of this Latino district by making it less Latino—doubling the black population and trading Republican-leaning Anglos for Democratic-leaning Anglos. The contradiction that decreasing HCVAP makes a district more Latino demonstrates the error in using "performance" as the defining factor of a Latino opportunity district.

6. The proposed District 23 in C220 does not meaningfully improve the performance for Latino candidates: The Latino candidate of choice will be elected in only two of ten elections. The only permissible justification for a radical redrawing of District 23 would be to improve electoral chances, even assuming that any measure other than Hispanic Citizen Voting Age Population ("HCVAP") is an appropriate test. That purpose fails in C220.

7. Plan C220 protects District 25, without justification in voting rights law. It is a crossover district that a court promulgating an interim plan is not authorized to implement. Crossover districts are not protected under section 2, and the Department of Justice did not challenge District 25 under section 5. It is therefore questionable as to what authority this court would have at either the remedial stage or the interim stage to redraw this crossover district.

8. There are serious dislocations in the Dallas-Fort Worth area wrought by C220. The City of Arlington is split three ways (whereas it was unified in the enacted plan), effectively destroying its political voice in any district. District 6, which was never targeted for attack under the Voting Rights Act, has been changed to become a Dallas-based district, contrary to history and to any unavoidable shifts in population over the past decade.

9. Plan C220 unnecessarily splits the City of El Paso between Congressional districts.

10. In District 23, Plan C220 moves the lines by swapping Republican-leaning Anglo voters in northwest Bexar County for Democrat-leaning Anglo voters in west-central San Antonio. The Legislature is entitled to engage in partisan gerrymandering not inspired by ethnic motive. This court-ordered change is impermissible in an interim plan.

11. LULAC charges, in its response, that "C220 dilutes the Latino voting strength in Texas by not increasing the number of Congressional districts in which Latinos have an opportunity to elect candidates of their choice."

In sum, C220, though a forthright attempt to fashion an interim plan that meets the requirements of the Voting Rights Act while not intruding unnecessarily on legislative prerogative, fails that test. I respectfully dissent from the imposition of C220 as the plan to be used for the 2012 Congressional elections in Texas.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/25/11
Document 543

ORDER

Defendants' motion to stay implementation of the court-drawn interim house redistricting plan pending appeal (Dkt. No. 529) is DENIED for the reasons given in this Court's Order dated November 23, 2011. As stated in that Order, when there is no other legally enforceable plan in effect, this Court is required to craft an independent court-drawn interim map. The State has misinterpreted the applicable case since the inception of the interim court plan process. The State insists that the Court must simply adopt its enacted unprecleared plan, making only minimal changes, if any, to "remedy" any constitutional or statutory violations. The State continues to rely on *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982), which is clearly inapposite to the situation that the Court faces herein. In *Upham*, the district court was faced with drawing a remedial

plan after preclearance of the State's enacted plan had been denied. In the remedial phase, under *Upham*, the district court's task would be limited to remedying the portions of the map known to be retrogressive or otherwise violating the Voting Rights Act or the U.S. Constitution. Had the State chosen the path of administrative preclearance through the Department of Justice, we would perhaps be in the remedial phase right now. However, the State chose to file a lawsuit in the United States District Court in the District of Columbia, which is still pending, and we are not in the remedial phase. Instead, we are in an interim phase where the Court has been placed in the position of crafting an independent court drawn plan that complies with the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act. In doing so, the Court is precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan. *See Lopez v. Monterey County*, 519 U.S. 9, 117 S.Ct. 340 (1996)(district court erred when it failed to independently craft an electoral plan and instead adopted the County's proposal, which required preclearance); *see also McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224 (1981)(district court erred in adopting the County's plan, which required preclearance). It is undisputed that the "failure to obtain either judicial or administrative preclearance renders the [voting] change unenforceable," *Clark v. Roemer*, 500 U.S. 653, 111 S.Ct. 2096, 2101 (1991), and the Court cannot simply

adopt an unprecleared redistricting plan, in whole or in part, with the signatures of a few judges sitting in Texas.

Further, the Court's order is not akin to a preliminary injunction as the State suggests. The only request for injunctive relief that has been raised in this lawsuit is the plaintiffs' request that the State's enacted plan be enjoined from implementation because it has not been precleared. *See Clark*, 111 S.Ct. at 2101 (if there has been no preclearance, plaintiffs are entitled to an injunction prohibiting the State from implementing the changes). However, since the inception of this lawsuit, the State has admitted that its enacted plan must be precleared prior to implementation. Yet it has persisted in trying to avoid preclearance altogether by demanding that its unprecleared plan be adopted by the Court as an interim court drawn plan. Again, the dictates of the U.S. Supreme Court preclude this Court from doing so.

The dissent has somewhat embraced the State's arguments, and also relies on *Upham*, even though this Court has not arrived at the remedial stage of these proceedings. Likewise, the dissent tries to distinguish *Lopez* based on the procedural posture of the preclearance proceedings in this matter. However, there was no preclearance in *Lopez* and there is no preclearance in this case. At the end of the day, no preclearance means no preclearance, and no enforceable plan. The dissent also fails to appreciate that the Court has drawn an independent redistricting plan without ruling on any of the various legal challenges, and it has considered the parties' legal challenges only for the purpose of

avoiding the same legal challenges to the court drawn map. *See Conner v. Waller*, 421 U.S. 657, 95 S.Ct. 2003 (1975)(the district court cannot decide the constitutional challenges to the challenged, unprecleared plan). The Court's House plan clearly rises above the myriad of challenges to the State's enacted plan and allows a free and fair election in 2012.

In conclusion, the State claims that it will be irreparably injured if a stay is not granted. However, the individuals who would suffer irreparable injury if the stay were granted are the citizens of Texas, by being deprived of the opportunity to vote in the upcoming election under the schedule currently in place.

SIGNED this 25th day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

Because a stay of the orders implementing interim plans for the 2012 elections is needed to allow orderly review and clarification of critical legal issues, and because a stay will not harm any party, I respectfully dissent from the denial of a stay. In its order announcing an interim redistricting plan for the Texas House of Representatives, the majority acknowledged that "these are difficult issues and

reasonable minds can disagree." It is therefore puzzling that the majority is unwilling to stay its order so that those difficult issues can be addressed on appeal before the announced interim plans are implemented.

There are myriad issues to be decided regarding interim, court-ordered redistricting plans. Because these matters are usually raised only in the wake of the decennial census, the caselaw is somewhat sparse and often murky. Questions that are not addressed now, before any part of these interim plans are implemented, might not be answered for yet another ten years or more. That is why the more orderly course is for this court to stay its proceedings, before filing for office begins in Texas on November 28, so that the Supreme Court will have sufficient time to address the complex legal issues that apply to interim plans.

Here are the issues most begging for resolution or explication:

1. In fashioning a temporary interim redistricting plan, how much deference should a court give to state-enacted legislative plans where a determination for preclearance has been submitted but is pending in: (1) districts that have not been specifically challenged; (2) districts that have been challenged under novel legal theories; (3) districts that have been challenged but as to which the challenges are unlikely to succeed on the merits; and (4) districts that have been challenged where the claims have a likelihood of success on the merits? In *Upham v. Seamon*, 456 U.S. 37 (1982), the Court directed lower courts to modify a state's legislative

plans only where absolutely required by law in a situation in which a determination on preclearance had been made and two of the districts in the State's plan had failed preclearance. *See also White v. Weiser*, 412 U.S. 783, 794-95 (1973). In contrast, the Court in *Lopez v. Monterey County*, 519 U.S. 9 (1996), rejected a lower court's wholesale implementation of a county's plan as an interim plan where the county had failed even to submit the plan for preclearance, defying a court order and despite being on notice for five years.

The instant case falls somewhere in between the situations in *Seamon* and *Lopez*: The State of Texas here has not attempted to frustrate or obviate the preclearance process but instead has timely submitted its maps to the D.C. District Court (unlike the county in *Lopez*), but the D.C. court has not yet ruled on preclearance (unlike the Department of Justice in *Seamon*, which had ruled on preclearance). Although the majority, as to the Texas House of Representatives, contends that the many challenges to the State's plan makes it "impossible to give substantial deference to the State's plan," the very existence of my proffered alternative plan, H299, shows that it is possible to give more deference than the majority did while still taking the plaintiffs' challenges seriously. It would be of greater assistance for the Supreme Court to provide guidance on this issue.

2. In a court-ordered interim plan, how much population deviation is permissible in districts unchallenged by the plaintiffs or districts without meaningful one-person one-vote issues? The majority, relying on *Connor v. Finch*, 431 U.S. 407,

414 (1977), modified the State's enacted districts to bring them into *de minimis* deviation, even in districts unchallenged by the plaintiffs.

In contrast, my map left the unchallenged districts, which had population deviations within the legally permissible range for legislatures (but were not *de minimis*), intact, in accordance with the guidance given in *Seamon*, which held that the stricter *Connor* standard cannot be the sole basis for modifying a state's redistricting, but instead is applicable only where a specific violation was found and a remedial district was being drawn. *Seamon*, 465 U.S. at 43.

3. For purposes of section 2 and section 5 of the Voting Rights Act, is election "performance" relevant or, or instead is the relevant measure the percentage of citizen voting age population? The majority redrew Districts 77 (in El Paso County) and 117 (in Bexar County) because, under, the State's plan, the district does not "perform" often enough (*i.e.*, it was likely to elect a Republican) despite Hispanics' comprising an overwhelming majority of the citizen voting age population in those districts (73% and 63%, respectively). In contrast, I read the section 2 caselaw to say that performance is not a relevant measure, *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994), but rather the relevant measure is the majority-minority requirement, *Barlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1244-45 (2009).

I have not found, nor has the majority cited, any caselaw to the contrary. That said, there is little to no guidance about whether a court should consider

performance in a section 5 retrogression or discriminatory intent analysis, so it would be helpful for the Supreme Court to provide clarity on this question.

4. May a court order the creation of minority "coalition" districts in an interim plan, and, if so, under what circumstances? Though the Court in *Bartlett* rejected the contention that "cross-over" districts are covered by section 2, some of its language calls into question whether "coalition" districts are similarly covered (although the Court did expressly reserve the question). The majority created such coalition districts in Dallas County (HD 107), Fort Bend County (HD 26), and Bell County (HD 54). Districts 26 and 54 relied on Asian votes to form a "coalition," despite the lack of evidence showing cohesion between Asians and Blacks or Hispanics in voting.

Though the majority contends these new coalition districts arose "naturally" from a restoration to the *status quo*, it is hard to see how that could be the case: For example, HD 107 was substantially reconfigured from the *status quo* (composed of less than 40% of HD 107 in the benchmark plan) to exclude Anglo voters and include minority voters, reducing the Anglo citizen proportion by 33%. Similarly, Districts 26 and 54 were altered from the *status quo* by removing almost exclusively white populations instead of reducing the population in a race-neutral manner. Although my proposed alternate plan creates a new coalition district in Tarrant County, it is the identical new district created by the State (and dismantled by the majority), and the State has unquestionable latitude

to create such districts so long as it does not subordinate traditional redistricting principles to race.

The lack of clarity regarding coalition districts is evidenced by a circuit split on whether they may ever be required. The Fifth Circuit has treated the question as one of fact, holding that it is not clearly erroneous for a district court to find the first Gingles requirement satisfied by aggregating minority groups to reach the 50% threshold. *See Campos v. City of Baytown, Tex.*, 840 F.2d 1240 (5th Cir. 1988). The Sixth Circuit, however, has held that the text of the VRA does not allow its application to coalitions of minority groups. *See Nixon v. Kent Cnty.*, 76 F.3d 1381 (6th Cir. 1996). This issue cries out for clarification. In its motion for stay, the State concedes that it may become necessary to delay the primary elections pending appellate review of issues regarding the interim plans. Indeed, Texas has some of the earliest primaries—perhaps the very earliest—in the United States. A delay of even a few weeks would still provide ample time for orderly primaries and runoffs well in advance of the November elections. But long before any such adjustment might become necessary, the first step should be for entry of a stay of this court's orders imposing interim redistricting plans for the Texas House of Representatives and the Texas Senate and, once this court imposes an interim Congressional plan, a stay of that order as well. Likewise, a temporary stay should be entered of candidate filing and qualifications deadlines for all elective offices so that filing does not begin on November 28.

The majority's refusal to enter a stay under these compelling circumstances is error. I therefore respectfully dissent.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/23/11
Document 528

ORDER

The court, by majority, adopts PLAN H302 as the interim plan for the districts used to elect members in 2012 to the Texas House of Representatives. A map showing the redrawn districts in PLAN H302 is attached to this Order as Exhibit A. The textual description in terms of census geography for PLAN H302 is attached as Exhibit B. The statistical data for PLAN H302 is attached as Exhibit C. This plan may also be viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Court-ordered interim plans." Additional data on the interim plan can be found at the following website location maintained by the TLC under the "Announcements" banner: http://www.tlc.state.tx.us/redist/redist.htm.

This interim map is not a ruling on the merits of any claims asserted by the Plaintiffs in this case, any of the other cases consolidated with this case, or the case pending in the United States District Court for the District of Columbia ("D.C. Court").

The decennial census was conducted last year, pursuant to Article I, § 2 of the United States Constitution. After the census figures were released, it became clear that the current apportionment plan for the Texas House of Representatives violates the one person, one vote principle under the United States Constitution as a result of the dramatic population growth in the last decade. Thus, the State of Texas undertook redistricting efforts to apportion seats in the Texas House of Representatives. See U.S. CONST. ART. I, § 2; see also TEX. CONST. ART. III, § 26.

The 82nd Texas Legislature enacted House Bill 150 ("H.B. 150"), which established a new redistricting plan for the Texas House of Representatives. ("Plan H283"). House Bill 150 was signed in the Texas House and Texas Senate on May 2, 2011 and signed into law on June 17, 2011. A lawsuit for preclearance of the State's enacted plan was filed on July 19, 2011 and is currently pending in the United States District Court for the District of Columbia. In that case, the United States has stated that it believes the State's enacted House plan was "adopted with a discriminatory purpose" and "has a retrogressive effect" on the voting strength of minority voters. The D.C. Court, hearing this argument, concluded that "the State of Texas used an improper standard or methodology to determine" if its maps would adversely affect minority voters.

The D.C. Court therefore denied the State's request for summary judgment, electing to conduct a trial to determine factual issues related to the alleged discrimination by the Texas Legislature.

The D.C. Court's refusal to approve the State's map places this Court in the unwelcome position of having to "designate a substitute interim plan for the 2012 election cycle by the end of November."[1] Because the current plan is malapportioned and the State's enacted plan has not been precleared, the Court prepared a court drawn plan so that the 2012 elections could proceed in a timely manner.[2] With the invaluable technical assistance of the staff at Texas Legislative Council, the Court was able to draw a redistricting plan that met with the approval of a majority of the Court.

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[1] As this Court noted in its order denying summary judgment, because the State's enacted House plan has not been precleared, it is unenforceable and cannot be implemented. *Clark v. Roemer*, 500 U.S. 653, 646 (1991) (failure to obtain either judicial or administrative preclearance renders the voting change unenforceable). Plaintiffs in this Court also have challenged the legality of the State's enacted House plan and sought to enjoin the State from implementing the plan.

[2] When an enacted plan is not in place in time for the upcoming election, the Court must step in and craft an independently drawn court plan for the upcoming election. *See Branch v. Smith*, 538 U.S. 254, 266 (2003) (upholding injunction of state court plan because "it had not been precleared and had no prospect of being precleared in time for the 2002 election"); *Lopez v. Monterey County*, 519 U.S. 9, 24 (1996) (where Section 5 preclearance requirements have not been satisfied the remedial court must determine "what remedy, if any, is appropriate.").

Despite the allegations of intentional discrimination and widespread constitutional violations in the enacted House plan, the State objects to issuance of a court-drawn map and insists that this Court must adopt the enacted plan "[b]ecause unelected federal judges possess neither the constitutional power nor the political competence to make the policy choices essential to redistricting[.]" While redistricting is generally a task for legislatures, a legislature's powers are not unbounded. Here, Texas failed to receive the necessary Voting Rights Act approval for the House plan before the 2012 elections. In such cases, federal courts are required to step in to create a lawful map that will allow free and fair elections to go forward.[3]

In crafting an interim map, this Court may not simply fix the problematic parts of the enacted map as the State suggests.[4] Doing so would interfere with the lawsuit currently pending in the D.C. Court, a lawsuit initiated by the State of Texas. Rather, this Court is tasked with drafting an independent map that will enable elections for the 2012 election cycle. Once the D.C. Court rules, and if the State receives preclearance for its enacted plan, this Court would then remedy any constitutional defects while deferring to State policy for the rest of the map.[5] If

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[3] *See Lopez*, 519 U.S. at 24.

[4] Despite the State's argument that this Court should adopt the State's enacted plan wholesale, the State recently requested a trial in the D.C. Court to occur in early December, thereby implicitly acknowledging that this Court is not free to remedy defects in the enacted plans until there is a ruling from the D.C. Court.

[5] *See Upham v. Seamon*, 456 U.S. 37 (1982).

the D.C. Court denies preclearance, the enacted plan will be null and the Legislature will be required to enact a new plan. But until that time comes, this Court's hands are tied and it must draft an interim map.

The Court's primary goal in crafting its map was to preserve the status quo as much as possible. All proposed maps, including the State's enacted map, were considered.[6] But ultimately, the Court was obliged to adopt a plan that complies with the United States Constitution and also embraces neutral principles that advance the interest of the collective public good, as opposed to the interests of any political party or particular group of people. The Court therefore declined to adopt any of the Plaintiffs' proposed plans, and has instead crafted a plan that embraces the neutral districting principles required of court-drawn plans.

In determining the standards, principles, and criteria to follow in drawing this plan, the Court carefully considered the parties' briefs, the relevant case law, and the approach taken by other district courts.[7] The legal standards and neutral

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[6] *Smith v. Cobb County*, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) ("That a court must not act as a rubber stamp does not mean, however, that the court cannot consider the proposed legislative plan, just as it considers any other plans submitted to it.")

[7] When it became clear that the Court would need to craft a court-drawn plan, it sought the parties' comments on the standards that would govern its task. The State appears to completely ignore the legal standards applicable to an independent court-drawn plan. Instead, the State insists that the Court take the State's enacted plan, make only minimal

redistricting criteria employed by the Court in drawing the House map are based on clearly established principles and ensure the fairness and impartiality expected in any judicially crafted redistricting plan. Those neutral principles—including primarily compactness, contiguity, and respect for county and municipal boundaries—place the interests of the citizens of Texas first.

In drawing the map, the Court began by considering the uncontested districts from the enacted plan that embraced neutral districting principles. Although the Court was not required to give any deference to the Legislature's enacted plan, the Court attempted to embrace as many of the uncontested districts as possible. After inserting those districts into the map, the Court adjusted them to achieve *de minimis* population deviations.[8]

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changes, if any, to "cure" any "defects" in the plan, leave the rest untouched, and implement the plan as a court-drawn plan. This approach would be a clear contravention of Section 5 preclearance requirements and would require the Court to rule on the merits of the State's enacted plan, which it is not permitted to do at this juncture. *See McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981) ("But where a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction]' . . . the preclearance requirement of the Voting Rights Act is applicable.").

[8] When a court is called upon to draw districts, it has less latitude than a legislative body might have when it comes to equality in population. "Court-ordered districts are held to higher standards of population equality than legislative ones. A court-ordered plan should 'ordinarily achieve the goal of population equality with little more than *de minimis* variation.'" *Abrams v. Johnson*, 521 U.S. 74, 98 (1997); *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975); *Connor v. Finch*, 431 U.S. 407, 414 (1977).

When asked for comments on the proposed map, the Plaintiffs did not object to the Court's use of the enacted map for those districts.

In his dissent, Judge Smith[9] argues that the Court should have given more deference to the State's enacted plan in crafting an independent court-drawn plan. However, the Court embraced as many of the uncontested districts as possible. The myriad of significant legal challenges to the State's enacted plan under the Voting Rights Act and the United States Constitution made it impossible to give substantial deference to the State's plan as the dissent has suggested.[10] Those challenges include: Districts 26, 27, 31, 32, 33, 35, 36, 39, 40, 41, 54, 78, 90, 93, 95, 102, 103, 104, 105, 107, 112, 113, 114, 117, 137, 139, 144, 145, 146, 147, and 149. With the border-to-border challenges to the State's enacted map, the Court was forced to undertake the delicate task of creating an independent map, giving as much consideration to the State's enacted map as possible without compromising the legal standards and neutral redistricting criteria that it set out to follow.

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[9] The two undersigned judges likewise respect Judge Smith's work ethic and professionalism, and thank him for his service. Nothing in this opinion is intended to personally or professionally impugn his judgment in this case. As Judge Smith notes in his dissenting opinion, these are difficult issues and reasonable minds can disagree.

[10] *See Abrams v. Johnson*, 521 U.S. 74, 86 (1997) (stating that *Upham* deference is not appropriate where "the constitutional violation [] affects a large geographic area of the State" because 'any remedy of necessity must affect almost every district.'").

Thus, after incorporating as many of the uncontested districts as possible into the interim map, the Court turned to the districts that are challenged as unconstitutional and attempted to return them to their original configuration in the benchmark. The dissent states that in doing so the Court has made "radical alterations in the Texas political landscape." The reality is that demographics, not this Court's actions, have changed the landscape. Since the 2000 census, the population of Texas has grown by 4,293,741.[11] The vast majority of that growth is attributable to growth in the Latino and African American communities. Specifically, the Hispanic population in Texas grew by 2,791,255 and the Black population grew by 522,570, while the Anglo population increased by less than 465,000 people.[12]

Despite the population growth stated above, the challenged enacted plan reduced minority opportunity districts from 50 to 45. The Court's interim map merely restores the minority opportunity districts to their original configuration in the benchmark. The result of this restoration is a map that includes the original 50 minority districts, while "creating" three additional performing minority districts that emerged naturally once neutral districting principles were used. Indeed, the dissent's own map creates two additional minority districts–one in Tarrant County and one in Hidalgo County. The majority interim map also creates the

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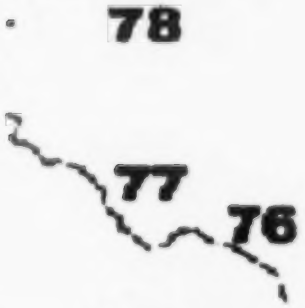
[11] http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf.

[12] Texas State Data Center: http://txsdc.utsa.edu/Data/Decennial/2010/Redistricting/Profiles.aspx

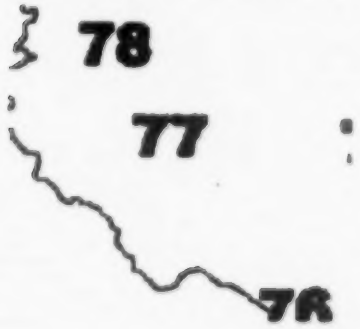
district in Hidalgo County, but excludes the one in Tarrant County and instead adds the second one in Harris County and a third in El Paso. The district in Harris County sprang naturally from the population growth in the region. Similarly, the El Paso district had been gerrymandered in the enacted plan so that it ended up configured into the shape of a deer with antlers.

Benchmark (Plan H100)

Enacted (Plan H283)



Interim Plan (H302)



While the dissent includes this deer-shaped district despite allegations that it was unconstitutional, the interim map merely restores the district to its original configuration while making adjustments for population growth. The ultimate inclusion of one additional minority district compared to the dissent hardly seems like "radical alterations in the Texas political landscape." Indeed, it is the dissent's Tarrant County district that is the result of an intentional effort to create a minority district, unlike the Court's attempt to merely maintain the status quo.

Likewise, although acknowledging that neither this Court nor the D.C. Court has made any rulings regarding the merits of the cases, and that this Court is precluded from making such rulings until the D.C. Court rules on the Section 5 claims,[13] the dissent proceeds to conclude that the plaintiffs have failed to demonstrate a substantial likelihood of success on the merits and that accordingly the Legislature's judgments should be respected.

The dissent argues that "the majority seems to take the plaintiffs' complaints as true for purposes of interim relief on every colorable claim." The dissent apparently ignores the fact that it interprets many of the Plaintiffs' and Department of Justice's objections as baseless. The dissent does so while simultaneously acknowledging that "the Legislature created substantial population disparities in Dallas and Harris Counties in a manner that may raise concerns of racial or partisan gerrymandering in

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[13] *See Lopez*, 519 U.S. at 24.

violation of *Larios v. Cox*." Remarkably, after that concession, the dissent states: "Nothing in the State's enacted plan will hinder, in the slightest, Hispanic opportunity to register and vote in greater numbers than before." The dissent further discounts that the D.C. Court concluded that the State "used an improper standard or methodology to determine" if its map would adversely affect minority voters.

An excellent example of the dissent's interference with the D.C. Court's preclearance proceedings is seen in House District 117, which is located in the southwest corner of Bexar County. In the D.C. Court, the Department of Justice has alleged that HD117 was intentionally reconfigured by the State in an effort to trade out mobilized Hispanic voters who regularly vote for Hispanic voters who do not regularly vote. The dissent simply tosses this issue aside as being "without foundation," and adopts HD117 into the dissenting map. However by doing so, the dissent has done "[w]hat is foreclosed" to this Court because "Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color.'"[14]

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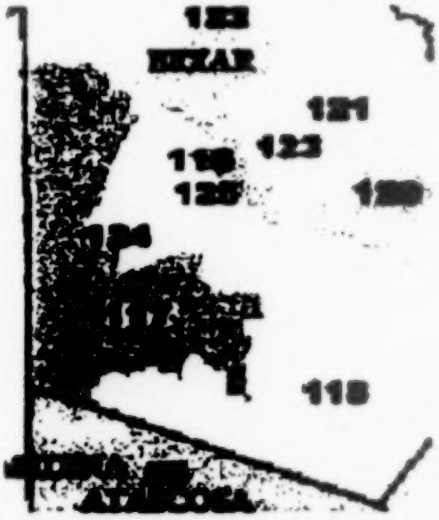
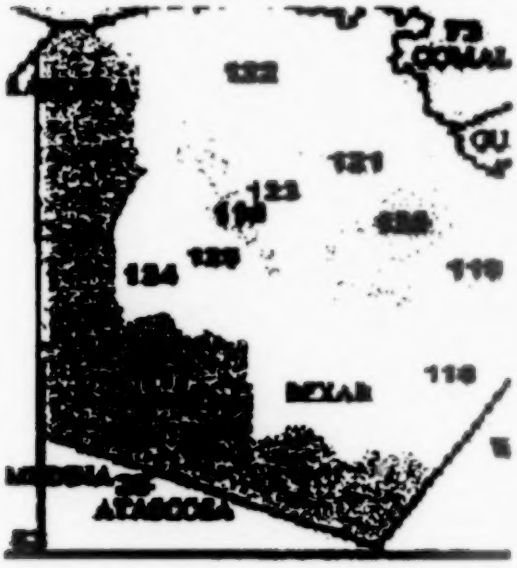
[14] *U.S. v. Board of Sup'rs of Warren County, 14 Miss.*, 429 U.S. 642, 645 (1977); *see also Smith v. Clark*, 189 F. Supp. 2d 529, 534 (S.D. Miss. 2002) ("A three-judge court does not have jurisdiction to determine whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color.'").

The Court's map in contrast merely returns HD117 to its original configuration in the benchmark in order to maintain the status quo until the D.C. Court rules. When viewed in the images below, this hardly seems like the "radical alterations in the Texas political landscape" alleged by the dissent:

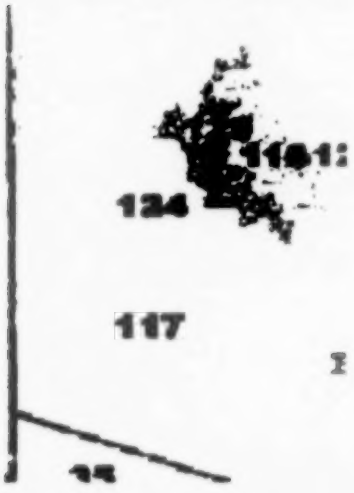
Benchmark (Plan H100)



Enacted (Plan H283)



Interim Plan (H302)

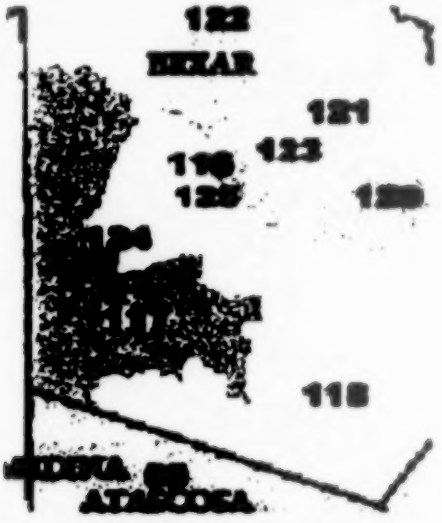


The dissent also wrongly alleges that the interim map "creates" coalition districts that are not required by the Voting Rights Act. Once again, the dissent misstates the Court's approach to drawing the interim map. This Court has not made any merits determinations as to whether coalition districts are required under the Voting Rights Act. Rather, like the minority opportunity districts discussed above, when these districts were restored to their baseline configuration and population shifts were taken into account, these districts resulted quite naturally.

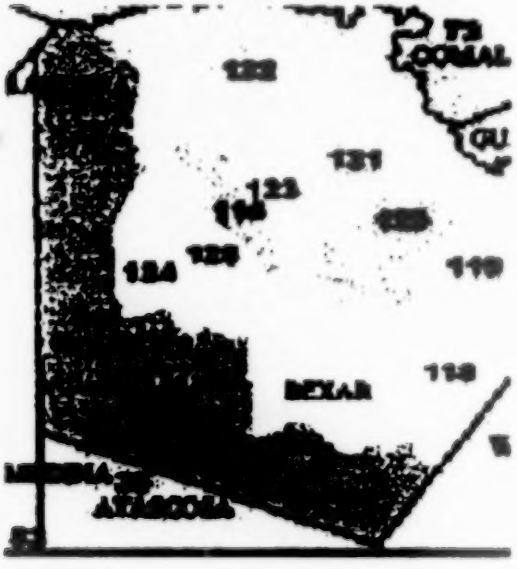
For example, House District 26, situated in Fort Bend County to the southwest of Houston, increased from 44 percent minority population to 60.6 percent minority in 2010. The image below shows that the enacted plan substantially reconfigured HD26 in a way that made it irregularly shaped. Evidence presented at trial indicates that this reconfiguration may have been an attempt by the State to intentionally dismantle an emerging minority district. As the images below demonstrate, the

interim plan attempts to take this district back to its original configuration in the benchmark while making slight adjustments for population changes.

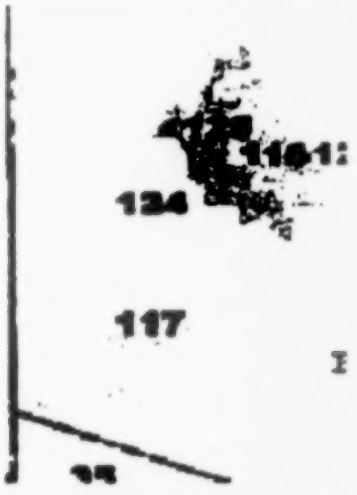
Benchmark (Plan H100)



Enacted (Plan H283)



Interim Plan (H302)



The dissent's incorporation of the State's bizarrely shaped House District 26, despite alleged constitutional violations, constitutes an improper merits determination regarding the validity of that claim. In contrast, the Court's decision to return the challenged district to its original configuration is simply a method of preserving the status quo until the D.C. Court has made a preclearance determination.

The State's objections to the Court's interim map suffer from even greater flaws. During the course of these proceedings the State has acknowledged that it separated a number of Latino and African American communities from their benchmark districts. It was also apparent from these proceedings that the Legislature started from the presumption that it could have population deviations as high as ten percent, and from that presumption it began to gerrymander districts to meet its goal of creating or maintaining as many Republican districts as possible. The State insists that it did not engage in racial gerrymandering, but rather only

engaged in these actions to make various districts more Republican. Accordingly, the State argues that any discrimination by the Legislature was directed against Democrats, not minorities. The State argued to the D.C. Court that it was entitled to summary judgment in that case, but the D.C. Court found that a fact issue existed as to whether the State engaged in racial discrimination. Having failed to secure preclearance from the D.C. Court, the State fails to comprehend that this Court undertakes an interim map process, not a remedial map process. It is clear the State fails to understand the difference when it has statements such as "the Court has not identified any particular Voting Rights Act (VRA) or constitutional violation that would provide a compelling or narrowly tailored explanation for the proposed revisions." This Court is precluded from making any rulings on the merits at this juncture. When it became apparent that the Court would be required to draw an interim map, the Court provided all parties (including the State) an opportunity to submit a proposed map. The State refused to do so, arguing that the Court was required to adopt its non-precleared map in its entirety. For the reasons stated above, the Court cannot adopt the State's unprecleared map. After arguing throughout these proceedings that its entire map was legal, the State then proceeds to attack the Court for failing to merely correct any "perceived legal defects in the recently-adopted redistricting plan," without detailing what "limited" legal defects should have been corrected.

In sum, the Court's map simply maintains the status quo as to the challenged districts pending

resolution of the preclearance litigation, while giving effect to as much of the policy judgments in the Legislature's enacted map as possible. Not everyone will get what they want from the Court's interim map. But, the Court concludes by stating expressly what is implicit in the Court's explanation of how it drafted the interim map: the plan was developed without regard to political considerations or the interests of particular groups of people.

The Legislature's enacted plan is by the State's own admission a radical partisan gerrymander. By asking the Court to adopt it, the State is asking the Court to conspire with the Legislature to enact a partisan agenda. This a court cannot do. As Judge Higgenbotham noted in *Balderas*:

> political gerrymandering, a purely partisan exercise, is inappropriate for a federal court drawing a [] redistricting map. Even at the hands of a legislative body, political gerrymandering is much a bloodfeud, in which revenge is exacted by the majority against its rival. We have left it to the political arena, as we must and wisely should. We do so because our role is limited and not because we see gerrymandering as other than what it is: an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.[15]

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[15] *Balderas v. State of Texas*, No. 6:01cv158, 2001 U.S. Dist. LEXIS 25740, at *19-20 (E.D. Tex. Nov. 14, 2001) (*per curiam*), *summarily aff'd*, 536 U.S. 919 (2002).

A more comprehensive opinion addressing additional legal issues will follow.

SIGNED this 23rd day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

When a three-judge court is forced into the unwanted position of fashioning interim redistricting plans, the focus should be on practicality, balance, and moderation, albeit with unbending adherence to the Voting Rights Act ("VRA") and the Constitution. The judges in the majority, with the purest of intentions, have instead produced a runaway plan that imposes an extreme redistricting scheme for the Texas House of Representatives, untethered to the applicable caselaw. The practical effect is to award judgment on the pleadings in favor of one side—a slam-dunk victory for the plaintiffs[1]—at the expense

[1] The majority's plan creates more minority or coalition districts than the Latino Taskforce plan (H292), as many as the NAACP plan (H202), and only slightly fewer than the MALC (H295) and Perez Plaintiffs (H297) plans. After the court published the draft plan on November 17, directing the parties to respond, the comments were predictable. The plaintiffs know a win when they see it: The Perez plaintiffs and Mexican American Legislative Caucus, for example, advised that "the majority's H298 should be adopted as the Court's interim court ordered plan for the 2012 Texas election cycle." It opined that

of the redistricting plan enacted by the Legislature, before key decisions have been made on binding questions of law. Because this is grave error at the preliminary, interim stage of the redistricting process, I respectfully dissent.[2]

Unless the Supreme Court enters the fray at once to force a stay or a revision, this litigation is, for most practical purposes, at an end. This three-judge court is at the point of having to draw interim maps now because the Texas Election Code sets extremely early deadlines to file for office; this panel has extended the dates so that filing for office begins November 28 and ends December 15, subject to further extension by this court or the Supreme Court. The sweeping decision by this panel majority affects most of the State map and will result in the election of new incumbents in 2012. The plaintiffs then predictably will claim that the interim map ratchets in their favor by constituting a new

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"the plan offered by the Court majority [ ] offers the best overall approach to meeting the Court's obligations for Court ordered interim plans."

[2] Nothing I say here is intended as personal or professional criticism of my two panel colleagues, who serve this court and this country with integrity, dedication, and skill. These are difficult and complex issues, and the caselaw is not always as helpful as we might hope, so substantial disagreement as to the result should not be surprising.

I compliment, as well, all of the attorneys from both sides. They have shown an exemplary level of cooperation, candor, flexibility, and hard work in presenting, orally and in writing, the legal and factual issues that this court must consider. They have made the court's work easier with the quality of their submissions.

benchmark for preclearance by the D.C. Court, remedial action by this court, or future action by the Legislature.[3] This reality warrants caution in drawing an interim map and especially in creating new minority opportunity districts at this early stage.

There has been no determination by the three-judge court in the District of Columbia (the "D.C. Court") that is considering the issues arising under section 5 of the VRA. Nor has this court formally taken under submission any issues with the enacted plan regarding the Constitution or section 2 of the VRA. Depending on what the D.C. Court decides, this court will need to conduct extensive evidentiary hearings on the remedial stage of this litigation. Only then will it be appropriate for us to determine, as a final matter, whether the enacted redistricting plans violate the VRA or the Constitution.

Whenever a district court engages in the unwelcome obligation of drawing a reapportionment plan, the starting point is always the recognition that "reapportionment is primarily a matter for legislative consideration and determination." *White v. Weiser*, 412 U.S. 783, 794 (1973) (citations omitted). Accordingly, district courts are bound to "follow the policies and preferences of the State, as expressed in statutory and constitutional provisions *or in the reapportionment plans proposed by the state legislature*, whenever adherence to state policy does not detract from the requirements of the Federal

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[3] *See Mississippi v. United States*, 490 F. Supp. 569, 582 (D.D.C.1979), *aff'd*, 444 U.S. 1050 (1980). *But see White v. City of Belzoni*, 854 F.2d 75, 76 (5th Cir. 1988).

Constitution." *Id.* at 795 (emphasis added). The aim of giving such due regard to plans proposed by the State is so the court will "not pre-empt the legislative task nor intrude upon state policy any more than necessary." *Id.* (citation and internal quotation marks omitted).

The parties sharply disagree about how much deference should be given to the maps validly enacted by the Legislature and that are pending preclearance before the D.C. Court. At one end, the State argues that, under *Upham v. Seamon*, 456 U.S. 37 (1982), this court is bound to defer to the enacted plan except in geographical areas where the court makes a specific finding of statutory or constitutional violation. At the other extreme, the plaintiffs argue that, under *Lopez v. Monterey County*, 519 U.S. 9 (1996), we should give no deference whatsoever to the legislative plans, not even considering them in drawing an interim map, because there has been no final ruling on preclearance.

Because we are not in a circumstance squarely controlled by either *Seamon* or *Lopez*, this court should take a moderate route between the two extremes in crafting an interim map. Unlike the court in *Seamon*, we are not in a position to defer blindly to the State's map, because there has been no valid determination of which districts have been precleared. *See Seamon*, 456 U.S. at 38. And unlike the court in *Lopez*, we are not faced with a situation in which the State has deliberately obstructed and tried to circumvent the preclearance process. *See Lopez*, 519 U.S. at 24. Therefore, recognizing that under *Lopez* we should not act as a rubber stamp for

the State where its enacted plan has not been precleared, but also cognizant that, under *White* and *Seamon*, we must give due regard to the will of the Legislature unless the VRA or Constitution requires otherwise, the correct approach for an interim map involves respecting legislative choices while seriously evaluating the plaintiffs' alleged violations.

The exigent circumstances in formulating an interim plan preclude this court from plenary review of all the legal issues. In view of these considerations, a proper interim map should begin with drawing, as the State enacted them, the districts that have not been specifically challenged in this court or the D.C. Court.[4] That respects the myriad political choices reflected in the legislative plan instead of substituting the court's preferences for the Legislature's.[5]

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[4] Although it is true that plaintiffs have alleged that the entire map was drawn with a discriminatory purpose, no plaintiff can substantially show that the rural and suburban districts in north and east Texas themselves were drawn with a discriminatory intent or are evidence of discriminatory intent.

[5] Creating an interim map is an art, not a science. It is a chore unfortunately required because of the impending deadlines of the Election Code and the necessity of drawing lines that can be used for the 2012 elections, which must proceed under some sort of plan. Because it is to be used only in the short term, before the pertinent legal and constitutional questions are formally decided, and because the court has only a brief time in which to fashion the complex plan, an interim plan must be somewhat indeterminate as compared to what a legislature, or on the other hand a court devising a final remedial plan, would issue.

In that sense, an interim map is like the sheet of plywood a merchant puts over his storefront the morning after a

The plaintiffs and, apparently, the majority rely on *Balderas v. Texas* to justify an approach that gives no consideration to the legislatively enacted plan.[6] First of all, the applicability of *Balderas* is questionable, because it involved a district court's drawing a new interim map from a *tabula rasa* on account of the legislature's *failing* to pass any reapportionment plan and further in light of the parties' having conceded that the existing scheme was unconstitutional. But even assuming its applicability, *Balderas* accorded substantially more deference to the State's legislative decisions, and assessed the plaintiffs' claims more critically, than does the majority here. For example, the *Balderas* court took the following approach to drawing an interim congressional map:

> Once the panel had left majority-minority districts in place and followed neutral principles traditionally used in Texas . . . *the drawing ceased*, leaving the map free of further change except to conform it to one-person, one-vote . . . . The results of this court's plan did ameliorate the gerrymander and placed the two districts gained by Texas in the census count; however, *doing more necessarily would have taken the court into*

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damaging storm: It is not especially pretty, but it keeps the rain out and allows the store to stay open for business until better repairs can be made. "*Le mieux est l'ennemi du bien*," "The perfect is the enemy of the good." Voltaire, *Dictionnaire Philosophique*.

[6] *See Balderas v. Texas*, No. 6:01-CV-158 (E.D. Tex., Nov. 14, 2001) (per curiam), *aff'd*, 536 U.S. 919 (2002).

> *each judge's own notion of fairness.* The practical effect of this effort was to leave the 1991 Democratic Party gerrymander largely in place as a "legal" plan.[7]

And when confronted with requests that more minority opportunity districts be drawn, *Balderas*, rather than taking the majority's approach of merely acquiescing to virtually all those requests, evaluated whether section 2 *required* those districts be drawn, employing the full totality-of-the-circumstances test. *Balderas*, No. 6:01-CV-158, at *10-*16. The *Balderas* court ultimately rejected those requests, reasoning,

> The matter of creating such a permissive district is one for the legislature. As we have explained, such an effort would require that we abandon our quest for neutrality in favor of a raw political choice. . . . Such arranging of voting presents a large and complex decision with profound social and political consequences. . . . We have no warrant to impose our vision of "proper" restraints upon the political process beyond the constraints imposed by the Constitution or the Voting Rights Act.

Id. at *13-*14 (citation omitted). *Balderas* quoted the Supreme Court's explanation of the three-judge district court's role: "[T]he federal courts may not

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[7] *Henderson v. Perry*, 399 F. Supp. 2d 756, 768 (E.D. Tex. 2005) (emphasis added). Because the *Henderson* court consisted of two of the same judges as did the *Balderas* court, *Henderson* provides us "the benefit of their candid comments concerning the redistricting approach taken in the *Balderas* litigation." *LULAC v. Perry*, 548 U.S. 399, 412 (2006).

order the creation of majority-minority districts unless necessary to remedy a violation of federal law." *Id.* at *14 (quoting *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993)).

This court's next step, then, should be to consider seriously the plaintiffs' claims and the status of the action pending in the D.C. Court and, taking a cautious and restrained approach, to modify the State's districts where plaintiffs have shown a substantial likelihood of success on the merits, rather than ratifying the plaintiffs' requests merely because they have alleged violations. In challenged districts where the plaintiffs' case is relatively weak, the Legislature's judgments should again be respected.

Under these standards, the interim phase is not the time for this court to impose the radical alterations in the Texas political landscape that the majority has now mandated. In almost every instance in which one or more plaintiffs ask for a substantial change that would upset a legislative choice, the majority has elected to order that revision, immediately, in the interim redistricting plans that are effective for the 2012 elections. The majority makes no apparent effort to decide which, if any, violations are most likely to be found on plenary consideration after full hearing and the benefit of a ruling from the D.C. Court. Instead, the majority enacts an ambitious and aggressive redistricting plan that mimics what the plaintiffs have requested in almost every significant respect.

There is a much more moderate and fair way to draw interim districts for the 2012 elections while

adhering to the VRA and the Constitution. In our role as a statutory three-judge court, we are empowered to make certain policy decisions, in the absence of an enforceable legislative plan, that resemble choices a legislature might make. But those rulings by an unelected court should be grounded in recognition of a reasonable chance of success on the merits by plaintiffs as to specific claims.

Instead, the majority seems to take the plaintiffs' complaints as true for purposes of interim relief on every colorable claim. At almost every turn, where a decision is to be made as to whether to disturb a settled district in favor of one asked for by plaintiffs, the majority chooses the latter. The result is a redistricting scheme that awards the plaintiffs for their assertive pleadings and grants no meaningful recognition to the legitimate, nondiscriminatory choices that are a part of any comprehensive redistricting process.

There is a balanced way to satisfy our obligation—given the current impasse—to produce interim plans with an order that is much more evenhanded than what the majority has announced. I have identified specific areas of the State as to which the plaintiffs have presented colorable claims of statutory or constitutional infirmity in the plans enacted by the Legislature. As to those, it can fairly be argued that plaintiffs can show a likelihood of success on the merits, although any final decision must await a full hearing after a decision by the D.C. Court. Also where needed, in the process of fashioning those changes, I have made adjustments to reduce population disparities among districts.

The map I offer, Plan H299[8], which I have prepared with the invaluable and untiring expert assistance of the Texas Legislative Council, addresses a limited number of concerns that are the only ones appropriate for tentative adjustment at this preliminary, interim stage, because they show a substantial chance of success. Given the considerable latitude afforded this court at the interim stage, I recognize the propriety of correcting those potential violations for the 2012 elections.

First, in an effort to reward and protect an Hispanic legislator in the Rio Grande Valley (Hidalgo County) who changed from Democrat to Republican after being re-elected in 2010, the Republican-dominated Legislature moved well over 90% of the constituents out of his district (District 41) and added, for him, a more reliable voter base, accomplished by an extreme gerrymander and palpable population disparities with neighboring districts. The result is ripe for a viable challenge as offending the one-person-one-vote principle of the Equal Protection Clause. The problem is easily corrected without upheaval of other parts of the State, and I have fixed that, by a change in a few adjoining districts, in the interest of fairness and to avoid any legal deficiencies.

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[8] A map showing the redrawn districts in PLAN H299 is attached as Exhibit D. The textual description in terms of census geography for PLAN H299 is attached as Exhibit E. The statistical data for PLAN H299 is attached as Exhibit F. This plan may also be viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Exhibits for Perez, et. al."

Second, this panel is unanimous in leaving untouched the Legislature's decision to reduce the number of Harris County representatives from 25 to 24, adhering to Texas's well-respected and neutral County Line Rule and to the fact that plain arithmetic shows Harris County is entitled to only 24 districts. In deciding which district to eliminate from the county, the Legislature deleted a coalition district (District 149) whose incumbent is the only Asian member of the House, and it paired that Democrat incumbent with a Democrat in abutting District 137. That raises possible section 5 concerns and potentially reeks of racial gerrymandering. Because of the fortuitous retirement of a Republican incumbent in Harris County, the problem is handily repaired by restoring the district of the Asian member and disbursing into nearby districts the population of the district that now has no incumbent.

Third, the Legislature dismantled a minority opportunity district in Nueces County, raising possible concerns under section 5. The State has persuasive justifications: Nueces County grew more slowly than did the rest of the State as a whole and now has only enough population to support 2.02 districts. Instead of violating the Texas Constitution by cutting the county line twice, the State drew two districts wholly contained within Nueces County, requiring the elimination of one minority opportunity district. Still, in an abundance of caution because of a possible section 5 retrogression claim, I have restored the minority opportunity district in Nueces County, though that unfortunately requires splitting the county three ways.

Fourth, the Legislature created substantial population disparities in Dallas and Harris Counties in a manner that may raise concerns of racial or partisan gerrymandering in violation of *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004). The map I have proffered largely evens out the variations and reduces the number of precinct cuts.

In fairness, I should mention that the majority, also, addresses these four concerns in the adjustments it has made. Not content, however, with making these justified changes, the majority ventures into other areas of the State and, as though sitting as a mini-legislature, engrafts its policy preferences statewide despite the fact that no such extreme modifications are required by the caselaw or by the facts that are before this court at this early stage before preclearance and remedial hearings.

For example, the majority changes the districts in Bexar County, where the Hispanic Citizen Voting Age Population ("HCVAP") is high enough in all the protected districts that there is no cognizable violation of the law. The entire bipartisan legislative delegation from that county approved the lines, constituting what is commonly known as a "drop in" plan affecting only the districts in that county. Any purported challenge to the Bexar County districts is without foundation.

Though the plaintiffs claim that the State impermissibly reduced the "performance" of House District 117 in Bexar County, there is no caselaw supporting the notion that what matters is election performance instead of opportunity to elect. Rather,

"the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994). Similarly, in *LULAC v. Perry*, 548 U.S. 399, 428 (2006), the Court applied the *De Grandy* quotation, saying, "Furthermore, to the extent the District Court suggested that District 23 was not a Latino opportunity district in 2002 simply because Bonilla [a Republican] prevailed, it was incorrect. The circumstance that a group does not win elections does not resolve the issue of vote dilution." Instead, in order that courts and legislatures can operate on the basis of clear, predictable standards, the Supreme Court has adopted a bright-line rule of defining a *Gingles* district as one with a majority-minority of eligible voters. *See Bartlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1244-45 (2009).

We should not use, as the majority apparently does, past elections as a crystal ball to predict how future elections will turn out, for this court is prevented from making such complex political predictions tied to race-based assumptions. *Id.* Nothing in the State's enacted plan will hinder, in the slightest, Hispanic opportunity to register and vote in greater numbers than before. Election performance in this context is relevant only if plaintiffs can show that the State is causing lower turnout by some electoral device that violates the VRA, then packing those low-turnout voters into a VRA-protected district.

The plaintiffs make no such showing. The question is thus whether the State is causing minorities not to elect candidate of their choice, or

whether instead that is caused by other factors unrelated to state action. Even if election performance were relevant to a VRA claim, any such relevance would be a novel interpretation of the VRA that would be inappropriate during this interim stage.

The VRA therefore does not prevent this court from adopting the State's proposal for District 117, because nothing in that enactment would mean that Hispanics "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Thornburg v. Gingles*, 478 U.S. 30, 43 (1986).

The majority repeats its Bexar County mistake in El Paso County, another "drop in" county, as to which no member of the El Paso delegation—which is 80% Democrat and 80% Hispanic—raised any objection before enactment. The enacted plan maintains the *status quo* in El Paso: five minority opportunity districts, with one of them likely to elect a Republican. The worst that can be said of the enacted El Paso County districts is that they are possibly the result of partisan gerrymandering—a questionable claim given *Vieth v. Jubelirer*, 541 U.S. 467 (2004)—but the HCVAP in all five El Paso County districts is high enough to escape meaningful challenge under the VRA.

Additionally, the majority equalizes the populations of the districts in Tarrant County, where the plaintiffs had offered no evidence that the slight population deviations were the result of racial gerrymandering. The only challenge to the Tarrant County map is a vague allegation of packing, with no

evidence to support it. Indeed, the majority took minority voters away where it matters most: As a result of the majority's evening out of the populations, the new coalition district that the State had enacted in Tarrant County contains fewer minority voters in the majority's plan. If the Legislature used population deviation to racially gerrymander the county, it did not do so to favor whites. This claim was not likely to succeed and does not merit a radical redrawing of Tarrant County.

Additionally, the majority creates a new coalition minority opportunity district in Dallas County (District 107). Even leaving aside the question whether courts can ever mandate minority "coalition" districts, the majority seems to draw this district merely because it *can* be drawn. But no such district is required under section 2, and the State's plan creates no retrogression under section 5. Thus, the majority's meddlings in Dallas County stem solely from the majority's policy preferences, which are not an appropriate justification for judicial action.

Contrary to what seems to be the majority's approach, merely because the plaintiffs can satisfy the *Gingles* factors (which require a showing that a compact majority-minority district can be drawn and that voter polarization exists), section 2 requires the drawing of new minority opportunity districts in only the most limited circumstances. Such districts are permitted only where the totality of the circumstances shows that minorities have less of an opportunity than do other members of the electorate to participate in the political process and to elect representatives of their choice *absent the drawing of*

that new district. Thornburg v. Gingles, 478 U.S. 30, 43 (1986). Courts are forbidden from drawing new minority opportunity districts without that type of section 2 finding. *Voinovich*, 507 U.S. at 156.

Indeed, the majority's general approach of maximizing the drawing of minority opportunity districts that satisfy the *Gingles* preconditions was specifically rejected in *Johnson v. De Grandy*, 512 U.S. 997, 1016-17 (1994):

> It may be that the significance of the facts under § 2 was obscured by the rule of thumb apparently adopted by the District Court, that anything short of the maximum number of majority-minority districts consistent with the *Gingles* conditions would violate § 2, at least where societal discrimination against the minority had occurred and continued to occur. But reading the first *Gingles* condition in effect to define dilution as a failure to maximize in the face of bloc voting (plus some other incidents of societal bias to be expected where bloc voting occurs) causes its own dangers, and they are not to be courted.
>
> . . . [R]eading § 2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose. One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast. . . . Failure to maximize cannot be the measure of § 2.

Given the fact-intensive analysis required to find a section 2 violation and the sensitive and constitutionally questionable judgments involved in drawing—as the majority does—a new district based primarily on race, the creation of such a district should be left to the Legislature (or, some would argue, to a three-judge court at the remedial stage after full consideration of the evidence). In no event is such a district justified by court order as part of an interim plan.

The majority creates a new Hispanic opportunity district (District 144) in Harris County. For the same reasons as with District 107 in Dallas County, that 25 district should await, at least, the remedial phase or a future legislative session. Nevertheless, the plaintiffs argue that the State's alterations to District 144 were intended to dismantle an "emerging" minority opportunity district. Although it is true that states are forbidden from modifying districts in which minorities are poised to elect the candidate of their choice because of natural population growth, *LULAC v. Perry*, 548 U.S. 399, 440-42 (2006), District 144 is nowhere near that point. Eastern Harris County is not an area of particularly rapid growth, and Hispanics represent less than 35% of the citizen voting age population—a stark contrast with *LULAC v. Perry*, where the challenged district had already reached majority HCVAP under the benchmark plan and was located in a rapidly growing area. Thus, at this interim stage, the court is not justified in creating a new Hispanic opportunity district in Harris County, nor

can it be said that it has restored an "emerging" one.[9]

The majority creates a new coalition district, also, in Fort Bend County (District 26). Even if a court could validly require the drawing of coalition districts, this particular district is impermissible, because it fails to meet the *Gingles* preconditions. As proposed, it has a combined HCVAP and BCVAP of only 30.2%, meaning that the sizeable Asian community (with a CVAP of 24.1%) would need to vote cohesively with blacks and Hispanics to elect their candidate of choice. *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc). But the plaintiffs have presented scant hard statistical evidence that Asians in Texas reliably vote cohesively with other minorities. That lack of cohesion is supported by the fact that new District 26 elects the minority candidate of choice in only a few reconstituted elections. Thus the majority, in an honest attempt to comply with section 2, instead engages in unconstitutional racial gerrymandering without section 2 as an even colorable legal justification. If a "coalition district" in District 26 is a good idea, but not required, it must be implemented by the legitimate policymakers and not the courts.

The same is true in Bell County, where the majority fashions a new minority coalition district out of whole cloth (District 54). Again, this district relies on a sizeable (albeit smaller) Asian community

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[9] The majority's insertion of the new opportunity district also forces changes in myriad other districts in Harris County, producing unintended consequences, in those districts, unrelated to the VRA or the Constitution.

to raise minority CVAP levels over 50%, but also again there is little to no hard statistical evidence that cohesion exists among Asians and blacks and Hispanics, and reconstituted election analyses show that minorities will only sometimes elect their candidate of choice in this new district. There is no legal requirement to create coalition districts (and certainly not one like this), even for the Legislature, and it is surely not appropriate for a court that is fashioning only interim relief.

And finally, even in uncontested rural areas, such as those in Northwest and East Texas, as to which no plaintiffs have brought specific challenges, the majority meddles with the enacted plan. This affront to the many small political judgments made by the Legislature in drawing the details of those districts cannot be justified by anything in the VRA or by slight reductions in population deviation, which are required only in a remedial stage after a court has formally found definite violations of federal law. *See Seamon*, 456 U.S. at 42-43.

In summary, it is difficult to overstate what the majority—with the purest of intentions—has wrought in ordaining its ambitious scheme. Its plan is far-reaching and extreme. It expands the role of a three-judge interim court well beyond what is legal, practical, or fair.

The majority should also consider the long-term implications of its interim plan and, in particular, the down-the-road political effects of drawing a map that casts aside legislative will. Once the D.C. Court and this court have ruled on the VRA and constitutional issues, we are bound by *Upham* to

defer to the legislatively-enacted plan for districts that are found to comport with federal law. Thus, in all likelihood, Texas will eventually conduct elections under the State's enacted plan for the vast majority of its districts.

If this court had chosen substantially to respect the state-enacted plan in drawing an interim map, there would have been great continuity between the 27 2012 elections and those that will take place for the rest of the decade. To the contrary, however, the majority's approach of readily accepting the plaintiffs' allegations yields the result that only a handful of the 150 districts in the Texas House of Representatives will remain the same between the 2012 elections and those that follow. Instead of requiring only a few districts to change, the majority has forced the State to move the lines of scores of districts twice in only four years, creating large administrative costs, forcing incumbents to campaign in new, unfamiliar areas, preventing long-term relationships between representatives and their constituents, and reducing political accountability.

In the end, my proposed map does not create any section 2 or section 5 problems, and it is true to the Fourteenth Amendment. And, under my approach, the plaintiffs by no means go away empty-handed. In addition to creating a new minority opportunity district in Tarrant County, as did the State, my map restores a minority opportunity district in Nueces County and another in western Harris County, for a total of fifty-two minority opportunity districts. Additionally, a new Hispanic district is created wholly within Hidalgo County, and

another Hidalgo County district is restored to its previous configuration, as the plaintiffs request.

In the plan I present, both average and top-to-bottom population deviations are under 10%, and, in response to the plaintiffs' allegations of discrimination in Dallas and Harris Counties, I eliminate any deviations correlated with partisan or racial demographics. The County Line Rule is respected unless federal law dictates otherwise, and, as a pragmatic concern, many precincts that were split in the enacted plan have been restored. My plan also pairs ten fewer incumbents into the same district than does the majority's. All this is accomplished without unnecessary intrusions into legislative enactments, unlike the majority's scheme, which, among other things, draws many districts not mandated by section 2 and does so using race as a primary motivating factor.

Justice Samuel Alito, in a recent debate discussing "activist judges," explained that judges are not theorists or social reformers. "Judging is a craft," he said. "It's not a science. It cannot be reduced to an algorithm."[10] That sentiment could not be more true for a three-judge court necessarily thrust into the role of issuing an interim redistricting plan.[11] At the present stage of this complex litigation, this panel should be modest and restrained in doing justice and should engage in the

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[10] *The Star-Ledger*, Nov. 15, 2011, *available at* http://blog.nj.com/ledgerupdates_impact/-print.html?entry=/2011/11/us_supreme_court_justice_to_ru.html.

[11] *See* note 5, *supra*.

"craft" of fashioning an interim plan that, instead of baldly adopting the allegations in the complaints, does justice by taking into account all the considerations I have described.

I have offered a moderate approach that recognizes and remedies the most potent claims brought against the legislative plan while leaving any more ambitious tinkering to a later judicial phase or to future legislative enactments. Because the conscientious and well-intentioned majority has ventured far beyond its proper role in announcing an interim redistricting plan for the Texas House of Representatives, I respectfully dissent, and I offer this alternate plan in response, in the hope that on appeal, the Supreme Court will provide appropriate and immediate guidance.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/23/11
Document 526

ORDER

The Court may offer plan C220 as the proposed interim plan for the districts used to elect members in 2012 to the United States House of Representatives.

This proposed plan may be viewed on the District View website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Exhibits for Perez et al." Additional data on the proposed plan can be found at the following website location maintained by the Texas Legislative Council under the "Announcements" banner: http://www.tlc.state.tx.us/redist/redist.htm.

Recognizing that many are already traveling for the Thanksgiving holiday, the parties are ordered to access these proposed plans and file any comments

and/or objections via CM/ECF no later than twelve o'clock noon on Friday, November 25, 2011.[1]

SIGNED this 23 day of November, 2011

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

[1] Judge Smith disagrees. Because filing for office is currently set to begin on Monday November 28 (unless that schedule issue is stayed or modified), the parties should be required to comment on the Congressional plan by the close of business on Wednesday November 23 so that the court can get a final order in place for the Congressional plan in plenty of time on Friday November 25 that the parties can take any appropriate action that day.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-360

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/17/11
Document 517

ORDER

Judges Garcia and Rodriguez may offer plan H298 as the proposed interim plan for the districts used to elect members in 2012 to the Texas House of Representatives. Judge Smith may offer plan H299 as an alternative in dissent.

These plans may be viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Exhibits for Perez et al."

The parties are ordered to access these proposed plans and file any comments and/or objections via CM/ECF no later than noon, Friday, November 18, 2011.

SIGNED this 17th day of November, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/07/11
Document 489

AMENDED ORDER

This amendment to the Court's order dated November 4, 2011 makes only one correction to the date contained in subsection 1.

The Court is entertaining various issues pertaining to redistricting of the United States House of Representatives, the Texas House of Representatives and the Texas State Senate. In order to provide the Court time to enter necessary orders, the following relief is hereby granted:

Residency

Section 7, Article III, of the Texas Constitution, requires that a person seeking election to the Texas House of Representatives must be a resident of the district the person seeks to represent for one year prior to the person's election as a representative.

Section 6, Article III, of the Texas Constitution, provides the same requirement for a candidate for the Texas State Senate.

Section 23, Article III, of the Texas Constitution, provides that a senator or representative who removes his or her residence from the district for which elected vacates the office of senator or representative.

Since the composition of House and Senate districts in which candidates might offer themselves are uncertain until the Court enters an order pertaining to the districts of the offices described above, and to be fair to the present officeholders, potential candidates and the citizens of Texas, the court finds it necessary to modify the foregoing residence requirements.

Therefore, it is ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from December 15, 2011 until the date of the General Election, and it is,

It is further ORDERED that an incorrect precinct designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before December 19, 2011.

An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period.

Schedule

The Court hereby adopts and orders this procedure with respect to the 2012 Primary Election for federal, state, county and local offices. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law:

a. The deadline for county chairs and state chairs to post notice of the dates of the candidate filing period in a public place in a building in which the chair has an office, as described in Texas Election Code § 141.040 is November 11,2011.

b. The first day to file an application for a place on the Primary Ballot as described in Texas Election Code § 172.023(b) shall be November 28, 2011.

c. An application for a place on the general primary election ballot must be filed not later than 6 p.m. on December 15, 2011 as described in Texas Election Code § 172.023(a)

d. The last day a vacancy for an unexpired term in an office of the state or county government may occur and appear on the primary ballot, as described in Texas Election Code § 202.004(a), is December 10, 2011.

e. The deadline for the county chair (or secretary of the county executive committee) to post a notice on the

bulletin board used for posting notices of the commissioners court's meetings, containing the address at which the county chair and secretary of the county executive committee will be available to receive applications on the last day for filing an application, as described in Texas Election Code § 172.022, is December 14, 2011.

f. If a candidate withdraws, dies or is declared ineligible by December 16, 2011, the name is omitted from the primary ballot as described Texas Election Code § 172.057 & 172.058.

g. The deadline for state chair to deliver certified list of statewide and multi-county district candidates to each county chair, as described in Texas Election Code § 172.028(b), is December 19, 2011.

h. Deadline for a write-in candidate for the office of county or precinct chair to file a declaration of write-in, as described in Texas Election Code § 171.0231(d), is December 19, 2011.

i. The deadline for the state or county chair, as applicable, to receive applications for a place on the general primary election ballot for an unexpired term for a vacancy in an office of the state or county government that occurs on or before December 10, 2011, as

described in Texas Election Code § 202.004(b) is December 19, 2011.

j. The deadline for county executive committee to conduct drawing for candidate order on ballot at the county seat (unless committee provides by resolution that primary committee is to conduct drawing), as described in Texas Election Code § 172.082(c), is December 20, 2011.

k. The deadline the state chair shall deliver the chair's list to the secretary of state, and each county chair shall deliver a copy of the chair's list to the county clerk, the state chair, and the secretary of state as described in Texas Election Code § 172.029(c), is December 22, 2011.

l. If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes before December 13, 2011, as described in Texas Election Code § 42.032.

m. On or before January 13, 2012, the registrar shall issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense

list, as described in Texas Election Code § 14.001.

Therefore, it is ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order. The political parties shall deliver this order and notice thereof to county party chairs without delay.

SIGNED this 7 day of November, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 10/04/11
Document 391

AMENDED ORDER

When this voting rights lawsuit began, the Court was aware of the task before it. Not only were the merits of the claims challenging, but the time frame in which the claims needed to be resolved was challenging. Because of other equally important issues facing our State, the legislature was not able to pass redistricting plans until the eleventh hour. The Court knew that time was of the essence and implemented an expedited schedule that began with the consolidation of multiple lawsuits from this and other districts. Trial on the merits began on September 6, 2011 and concluded on September 16, 2011. The parties have supplemented the record with additional evidence and they are now preparing their post trial briefs. The Court will be reviewing the evidence and the forthcoming briefs. However,

the law precludes this Court from issuing a final decision on the merits until there has been a determination on preclearance under Section 5 of the Voting Rights Act. Preclearance is not a function of this Court, and it has no control over the preclearance process. The State chose to initiate preclearance proceedings in the U.S. District Court for the District of Columbia instead of directly through the Department of Justice. That legally permissible choice likely has delayed a final decision on preclearance, possibly causing delays in the 2012 electoral process.

Because this Court cannot resolve the merits of this case until there is a determination on preclearance, its hands are tied. Although the Court will continue to review the evidence and post-trial submissions, it must remain in a holding pattern until the D.C. Court has spoken. The parties have kept the Court advised on the status of the preclearance proceedings, and it appears that those proceedings are far from the final decision-making phase. Thus, a resolution of the Section 5 preclearance issues prior to the upcoming election deadlines is becoming more unlikely.

With that in mind, and with the understanding that the Court will continue its work on the issues that are currently pending before it, the Court has an obligation to the public to consider other available options so that the 2012 election process may move forward. One of those options is the consideration of an interim court-ordered plan. However, even that process will take a tremendous amount of work with very little time to spare, if any. Thus, the Court will need full cooperation from the parties to continue

with their work on the challenged plans and, at the same time, assist the Court in its effort to prepare a possible interim plan that may be implemented as a fair and workable alternative. This is an unwelcome task that the Court would have preferred to leave to the Texas legislature, but there is no indication that the legislature will reconvene to undertake such a task anytime soon if at all.

It is therefore ORDERED that the following schedule is implemented, to run simultaneously with any other deadlines in this case, with the goal of implementing an interim plan in the event it becomes necessary:

1. The parties will file briefs by October 7, 2011, that may serve to advise and guide the Court on the process for devising any interim court drawn plans, including but not limited to:

    a. Any citations to cases in which a court drew interim plans under circumstances similar to those herein;

    b. How the legal parameters for interim plans differ from the standards for drawing remedial maps after a plan has failed to meet requirements under the Constitution or §2 or §5 the Voting Rights Act or any other applicable law;

    c. Whether there is any precedent for a court's implementation of the legislatively-adopted plan or the current benchmark plan for the State House of Representatives as an interim plan; and

d. The estimated time that it may take to devise two interim plans (Congressional and State House of Representatives).

2. The parties will prepare their respective proposed plans for the Court's consideration, and those plans will be fried no later than Monday, October 17, 2011. The plaintiffs are urged but not required to agree among themselves on the plans they submit. The proposed plans will include a detailed explanation of why the suggested plans comply with applicable legal standards.[1] Such explanation may include but is not limited to supporting data and expert opinions. The supporting data may be attached as an appendix. The parties should confer as much as possible in order to limit the objections thereto. The submission of and support of a plan by a party under this interim procedure will not be deemed to preclude or waive that party's right to contend that its favored plan (in the State's case, the legislatively-enacted plans or other plans the State may propose, and in the plaintiffs' case, other plans they may propose or have proposed) is also legally sound and, for any reason, more desirable.

3. The parties will respond to those proposed plans to which they have objections no later than Monday, October 24, 2011. The objections must be clear, concise and

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[1] See Chapman v. Meier, 420 U.S. 1, 26-27 (1975) and McDaniel v. Sanchez, 452 U.S. 130, 149 (1981).

supported by legal authority and/or affidavits of experts.

4. The parties will file a joint written advisory no later than Friday, October 28, 2011, informing the Court of the following:

   a. The estimated length of time for a hearing on the proposed plans;

   b. A list of witnesses and documents that they may offer at the hearing;

   c. Suggestions as to the manner in which evidence may be presented at the hearing;

   d. Any other matters that should be brought to the Court's attention at that time.

5. The Court will hold a hearing in which the parties will be expected to present their proposed plans. The hearing will begin at 8:00 a.m. on Monday, October 31, 2011. There will be a recess on November 1-2, with the hearing to continue at 8:00 a.m. on November 3rd and continue on November 4th if necessary. Each side will be given an opportunity to respond. The hearing will proceed in trial format, with opening statements, the presentation of the plans, and closing arguments with supporting legal authority.

6. The Court will appoint David Hanna and Clare Dyer of the Texas Legislative Council as independent technical advisors who will review the plans, advise the Court, and assist the Court in developing interim plans if the

> Court decides to proceed with interim plans. The advisors will be present at the hearing and available throughout the process, and other personnel of the Texas Legislative Council are permitted to assist as needed. If any party has an objection to the appointment of Mr. Hanna and/or Ms. Dyer, it should state its objection in its October 7 brief.

Again, this process is meant to ensure that the Court has a viable alternative in the event it becomes necessary. It does not supplant the ongoing review of the plans passed by the legislature. Likewise, nothing in this order should be construed as an indication that the Court or any of its judges has made a decision on any of the factual or legal issues raised, at trial or otherwise. Although the foregoing schedule and procedure is hereby implemented, the parties are permitted, in their responses, to recommend amendments or alternative procedures (agreed or contested) to achieve the necessary goals.

SIGNED this 4th day of October, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 09/29/11
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ORDER ENJOINING THE IMPLEMENTATION OF VOTING CHANGES

The Court has considered Plaintiffs' Motion for Temporary Restraining Order (Dkt. # 375) and the State's response thereto (Dkt. # 379). After reviewing the motion, response and the applicable law, the Court finds that Plaintiffs' motion should be GRANTED as follows:

Because the redistricting plans for the Texas House of Representatives (Plan H283) and the United States House of Representatives (Plan Cl 85) have not been precleared pursuant to Section 5 of the Voting Rights Act, the plans may not be implemented. According to the Texas Election Code, any changes that must be made in the county election precinct boundaries "to give effect to a redistricting plan" must be finalized by October 1,

2011. Tex. Elec. Code Ann. § 42.032 (Vernon 2010). Because the redistricting plans have not been precleared pursuant to Section 5 of the Voting Rights Act, all persons or entities that would otherwise have a duty under Section 42.032 of the Texas Election Code are relieved of those duties until further order of the Court. Likewise, Section 14.001 of the Election Code requires that voter registration certificates be issued to each voter in the county. Because the county election precinct boundaries will not be finalized, the persons or entities that would otherwise have a duty to issue such registration certificates are relieved of those duties until further order of the Court.

The parties have agreed that the relief granted herein will be effective as a permanent injunction, subject to being lifted by order of the Court as appropriate.

It is the responsibility of Defendants to take reasonable measures to ensure that the appropriate elected and administrative officials in the various counties are timely notified of this order. If any persons or entities receiving such notice have questions about the effect of this order, they should contact the Attorney General's Office or the Office of the Secretary of State.

SIGNED this 29 day of September, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 09/02/11
Document 285

ORDER

Pending before the Court is Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and, in the alternative, Motion for Judgment on the Pleadings (Dkt. # 209). Plaintiffs have filed responses thereto (Dkt. # 225, 226, 227, 230, 231, 232, 234, 236, 237, 239 and 240). Defendants also filed a reply (Dkt. # 249), and MALC filed a sur reply (Dkt. # 258). After reviewing the record and the applicable law, and after hearing the parties' oral arguments, the Court finds that Defendants' motions should be granted in part and denied in part, and the remaining claims will proceed to trial.

I.

Statement of the case

This is a voting rights case arising out of recently enacted legislative redistricting plans. The decennial census was conducted last year, pursuant to Article I, 2 of the U. S. Constitution. After the census figures were released, the State of Texas undertook redistricting efforts to apportion seats in the U. S. House of Representatives and the Texas House of Representatives. See U.S. CONST. Art. I, 2; see also TEX. CONST. Art. III, § 26.

The 82nd Texas Legislature enacted House Bill 150 ("H.B. 150"), which established a new redistricting plan for the Texas House of Representatives. ("Plan H283"). House Bill 150 was signed into law on or about June 17, 2011. The legislature also enacted Senate Bill 4 ("S.B. 4"), which established a new congressional redistricting plan for the State of Texas. ("Plan C185"). Senate Bill 4, as amended, was signed into law on or about July 18, 2011. A lawsuit for judicial preclearance of both plans has been filed and is currently pending in the U.S. District Court for the District of Columbia. The plaintiffs herein challenge the legality of the new redistricting plans and seek to enjoin Defendants from implementing the plans.

II.

The parties' claims and defenses

There are numerous parties to this consolidated action, and most of the pleadings have been amended since the inception of the lawsuit. The live

pleadings, and the claims and defenses asserted therein, may be summarized as follows:

A. The Quesada plaintiffs:[1]

These plaintiffs include Margarita Quesada, Romeo Munoz, Marc Veasey, Jane Hamilton, Lyman King, John Jenkins, Kathleen Maria Shaw, Debbie Allen, Jamaal R. Smith, and Sandra Puente. They describe themselves as Hispanic and African-American citizens and registered voters that reside in current congressional districts 6, 9, 18, 20, 24, 26, 29, 30 and 33.

The Quesada plaintiffs challenge the legality of Plan C185, the congressional redistricting plan. They allege that the plan clearly dilutes the voting strength of African-American and Hispanic voters. They claim that the districts in Plan Cl 85 are "racial gerrymanders" and the plan intentionally discriminates against Hispanic and African-American persons, in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. They also assert that Plan C185 is a "blatant partisan gerrymander," in violation of Article I, Sections 2 and 4 of the US. Constitution, and the First and Fourteenth Amendments to the U.S. Constitution. The Quesada plaintiffs allege that Plan C185 violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973, because minority voters are denied an equal opportunity to effectively participate in the political process and will not have any meaningful influence in elections

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[1] The Quesada plaintiffs' live pleading is their first amended complaint, Dkt. # 105.

for Members of Congress in Texas. Finally, they assert that Plan C185 cannot be implemented because S.B. 4, as amended, has not been precleared pursuant to Section 5 of the Voting Rights Act. The Quesada plaintiffs request declaratory and injunctive relief and seek recovery of their costs and attorney's fees.

The Quesada plaintiffs name Rick Perry, Governor of the State of Texas, and Hope Andrade, the Texas Secretary of State, as defendants. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: standing; immunity under the Eleventh Amendment; and, the cause of action under Section 5 of the Voting Rights Act is not justiciable.[2]

B. The MALC plaintiffs:[3]

The Mexican American Legislative Caucus ("MALC") is described as a non-profit organization established to serve members of the Texas House of Representatives that are elected from and represent constituencies in Latino majority districts. Many of the representatives elected to serve the districts are also Latino. Members of MALC are also registered voters in Texas, and participate in state and local elections.

MALC challenges the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan.

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[2] The defendants' answer to the Quesada plaintiffs' first amended complaint is Dkt. # 195.

[3] The MALC plaintiffs' live pleading is their second amended complaint, Dkt. # 50.

MALC claims that both plans far exceed permissible deviation limits and cannot be justified by legitimate state redistricting interests. MALC alleges that the Texas legislature employed racial gerrymandering techniques to dilute the voting strength of Hispanics and limit the number of districts in which Hispanics can elect candidates of their choice. MALC asserts a cause of action under 42 U.S.C. § 1983 for intentional discrimination and "discriminatory effect" in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. MALC also brings an equal protection claim under 42 U.S.C. § 1983 for violations of the one person, one vote principle. MALC asserts a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, alleging that Defendants used racial gerrymandering to dilute Hispanic voting strength and avoid drawing minority opportunity districts when such districts were clearly justified under the circumstances. Finally, MALC contends neither plan can be implemented because they have not been precleared pursuant to Section 5 of the Voting Rights Act. MALC requests declaratory and injunctive relief, and seeks recovery of all costs and fees.

The named defendants in MALC's complaint are: the State of Texas; Rick Perry, the Governor of the State of Texas; David Dewhurst, Lieutenant Governor for the State of Texas; and Joe Straus, Speaker of the Texas House of Representatives. They have filed an answer, generally denying the allegations and specifically asserting the following

defenses: standing; immunity under the Eleventh Amendment; and ripeness.[4]

C. The Latino Redistricting Task Force:[5]

The Latino Redistricting Task Force ("LRTF") describes itself as an unincorporated association of individuals and organizations committed to securing fair redistricting plans for Texas. The organizational members include Hispanics Organized for Political Education (HOPE), the Mexican American Bar Association, the National Organization for Mexican American Rights, the Southwest Voter Registration Education Project, the William C. Velasquez Institute, and the Southwest Workers' Union. The individual members are described as Latino registered voters who have been adversely affected by the dilution of Latino voting strength in the newly enacted redistricting plans.

The LRTF challenges the legality of Plan C185, the congressional redistricting plan, Plan H283, the Texas House of Representatives redistricting plan. As a result of the dramatic increase in the Latino population, which is geographically compact and politically cohesive, the creation of Latino-majority districts appeared axiomatic. However, the 82nd Legislature allegedly packed and fractured Latino voters into districts that ensured a loss in voting strength. The LRTF claims that both plans discriminate against them, in violation of the

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[4] Defendants' answer to MALC's second amended complaint is Dkt. # 110.

[5] The Latino Redistricting Task Force plaintiffs' live pleading is their second amended complaint, Dkt. # 68.

Fourteenth and Fifteenth Amendments to the U.S. Constitution. The LRTF asserts that both plans have the effect of "canceling out or minimizing" their voting strength as minorities and result in a denial or abridgement of their right to vote, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. The LRTF also asserts that the plans cannot be implemented until they have received preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The LRTF requests declaratory and injunctive relief and seeks recovery of their costs and fees.

The LRTF names Rick Perry, Governor of the State of Texas, and Hope Andrade, Secretary of State for the State of Texas, as defendants. They have fried an answer, generally denying the allegations and specifically asserting the following defenses: standing and Eleventh Amendment immunity.[6]

D. The Perez plaintiffs:[7]

The Perez plaintiffs are individuals who reside and vote in various counties in the State of Texas and have been adversely affected by the newly enacted redistricting plans. The Perez plaintiffs challenge the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. They assert that the minority populations in many

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[6] Defendants' answer to the Latino Redistricting Task Force's second amended complaint is Dkt. # 132

[7] The Perez plaintiffs' live pleading is their third amended complaint, Dkt. # 53

counties have been packed and/or fragmented for the purpose of diluting their voting strength. They claim that the plans are the result of racial and political gerrymandering and include population deviations well above constitutionally acceptable norms. They also claim that the misapplication of the prison population resulted in even more dramatic population deviations. The Perez plaintiffs claim that these actions by the State violate Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. They seek declaratory and injunctive relief and recovery of their costs and fees.

The Perez plaintiffs name Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas, as defendants. They filed an answer, generally denying most of the allegations, and specifically assert the following defenses: (1) the classification of prisoners for purposes of redistricting is a nonjusticiable political question, which falls outside the Court's jurisdiction; (2) political gerrymandering is a nonjusticiable political question; (3) the Perez plaintiffs lack standing to challenge the classification of prisoners for purposes of redistricting; (4) the challenge to the classification of prisoners fails to state a claim upon which relief may be granted; (5) the Perez plaintiffs fail to state a claim against Lieutenant Governor Dewhurst and Speaker Straus for which relief may be granted because they do not have the authority to alter the redistricting plan and/or prevent an election from

going forward; and (6) Eleventh Amendment immunity.[8]

E. The Rodriguez plaintiffs:[9]

The Rodriguez plaintiffs include twelve individuals who reside and vote in current congressional districts 10, 12, 15, 16, 18, 20, 21, 25. All of the Rodriguez plaintiffs are minorities. The plaintiffs also include Travis County, Texas and the City of Austin, Texas.

The Rodriguez plaintiffs challenge the legality of Plan C185, the congressional redistricting plan. They claim that there were several areas of Texas in which majority-minority districts could have been created, based on the 2010 census data. Yet the Texas Legislature engaged in purposeful, race-based discrimination to ensure that the voting power of minority voters was diminished. They also assert that the Texas Legislature deliberately fractured the tri-ethnic coalition enjoyed by voters in Travis County and the City of Austin, and the legislature's blatant racial gerrymandering will effectively prevent minority voters from having any meaningful impact on congressional elections for the next ten years.

The Rodriguez plaintiffs bring causes of action under Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments to the

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[8] Defendants' answer to the Perez plaintiffs' third amended complaint is Dkt. # 131.

[9] The Rodriguez plaintiffs' live pleading is their first amended complaint, filed as Dkt. # 23 in Cause No. 11-CA-635 prior to consolidation.

U.S. Constitution. They further assert that Plan C185 cannot be implemented until precleared, pursuant to Section 5 of the Voting Rights Act. They seek declaratory and injunctive relief and recovery of their costs and fees.

The Rodriguez plaintiffs name the following persons and entities as defendants: Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; Hope Andrade, Secretary of State for the State of Texas; Boyd Richie, Chair of the Texas Democratic Party; and, Steve Munisteri, Chair of the Republican Party of Texas. The defendants have fried an answer, generally denying most of the allegations and specifically asserting the following defenses: (1) the individual plaintiffs do not live in congressional district 27; thus, they lack standing to challenge the constitutionality of that district under Plan C185; (2) the Section 2 challenge to congressional districts that include Tarrant and Travis counties fails to state a claim upon which relief may be granted; (3) the Rodriguez plaintiffs cannot prove actual intent to discriminate based on race or ethnicity; (4) the Fifteenth Amendment claim must fail because the Rodriguez plaintiffs cannot prove that minorities are prevented from voting in congressional elections; (5) the Rodriguez plaintiffs lack standing to assert claims against Lieutenant Governor Dewhurst and Speaker Straus because their injuries are not traceable to them and neither the Lieutenant Governor nor the Speaker have the authority to take the corrective action being sought; and (6) the Section 5 claim is nonjusticiable, as

Defendants do not intend to implement the Plan until preclearance is granted.[10]

F. Mr. John Morris. individually:[11]

Mr. Morris sued individually, on behalf of himself only. He describes himself as a resident and registered voter in the 2d congressional district, which includes Harris County, Texas.

Mr. Morris challenges the legality of Plan C185, the congressional redistricting plan. He claims that the congressional district in which he resides was drastically changed as the result of partisan gerrymandering, effectively depriving him of his right to vote for the candidate of his choice. Plaintiff Morris asserts causes of action for violations of Article I, Section 2 of the U.S. Constitution and the First and Fourteenth Amendments to the U.S. Constitution. He seeks declaratory and injunctive relief, and recovery of any costs incurred herein.

Plaintiff Morris names Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas, as defendants. They have filed an answer, generally denying the allegations and specifically asserting the defenses of standing and Eleventh Amendment immunity.

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[10] Defendants' answer to the Rodriguez plaintiffs' first amended complaint is Dkt. # 133

[11] Plaintiff Morris' live pleading is his amended complaint, filed as Dkt. #7 in Cause No. 11-CA- 615 prior to consolidation.

G. Plaintiff-intervenor LULAC:[12]

LULAC is described as the oldest and largest national Hispanic civil rights organization, with a history of promoting voting rights on behalf of Hispanics and other minorities. Gabriel Rosales and others, who are individually named along with LULAC, are members of the organization. They are also registered voters in the State of Texas. They are collectively referred to as LULAC.

LULAC challenges the legality of Plan C 185, the congressional redistricting plan, Plan H283, the Texas House of Representatives redistricting plan. LULAC asserts that Hispanic growth exploded during the last ten years, as reflected in the 2010 census results. As a direct result of that growth, Texas was apportioned four new congressional districts. However, the Texas Legislature used racial gerrymandering to ensure that Hispanics would not be able to elect the candidate of their choice in any of the new districts. Plan H283 actually reduces the number of minority opportunity districts. LULAC claims that the plans dilute the voting strength of Hispanic and other minority voters, in violation of Section 2 of the Voting Rights Act. LULAC also claims that the State failed to accommodate the "undercount" of the Hispanic population in the census, further resulting in diminished voting strength in the Hispanic community. LULAC contends the plans contain substantial population disparities, in violation of the Fourteenth

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[12] LULAC's live pleading is its first amended and supplemental complaint, Dkt. # 78.

Amendment's equal protection clause and the one person, one vote principle.

LULAC brings its claims under 42 U.S.C. § 1983 for violations of the Fourteenth and Fifteenth Amendments, based on allegations of intentional discrimination, discriminatory effect, and violations of the one person, one vote principle. LULAC also brings a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, for dilution of minority voting strength. LULAC further contends that implementation of the plans prior to preclearance would violate Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. LULAC requests declaratory and injunctive relief, and seeks recovery of its costs and fees.

LULAC names as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; and, Joe Straus, Speaker of the Texas House of Representatives. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: (1) Eleventh Amendment immunity; (2) the claim under Section 5 of the Voting Rights Act is not justiciable; and (3) LULAC "lacks standing" to pursue its claims against the Lieutenant Governor and Speaker of the House.[13]

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[13] The defendants' answer to plaintiff-intervenor LULAC's first amended and supplemental complaint is Dkt. # 188.

H. Plaintiff-intervenor NAACP:[14]

The NAACP plaintiff-intervenors include the Texas State Conference of NAACP Branches and individually named members and registered voters, including Howard Jefferson, Juanita Wallace, and Rev. Bill Lawson. They are referred to collectively as the NAACP plaintiff-intervenors.

The NAACP plaintiff-intervenors challenge the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. They contend that both plans dilute the voting strength of African-American voters. The 82 Texas Legislature was presented with plans that did not dilute minority voting strength, but rejected them. Instead, the Legislature enacted redistricting plans that split the minority voting bloc and preventing them from effectively participating in the political process. The NAACP plaintiff-intervenors allege that the newly-enacted plans were developed with the intent to disadvantage African-American and other minority voters. They alleged that the plans exceed permissible population variances, and clearly violate the one person, one vote principle. They also assert that the plans cannot be implemented until precleared, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

The NAACP plaintiff-intervenors assert a cause of action under 42 U.S.C. § 1983 for intentional discrimination and violations of the one person, one

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[14] Plaintiff-intervenor NAACP's live pleading is its amended complaint, Dkt. # 69.

vote principle embodied within the Fourteenth Amendment to the U.S. Constitution. They also assert a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, based on the dilution of minority voting strength. They also note that the plans cannot be implemented prior to preclearance, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The NAACP plaintiff-intervenors request declaratory and injunctive relief and seek recovery of their costs and fees.

The NAACP plaintiff-intervenors name as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas. They have filed an answer, generally denying the allegations in the complaint and specifically asserting the following defenses: lack of standing and failure to state a claim against the Lieutenant Governor and Speaker of the House.[15]

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[15] Defendants' answer to the NAACP plaintiff-intervenors' amended complaint is Dkt. # 194.

I. **Congresspersons Eddie Bernice Johnson. Sheila Jackson-Lee. Alexander Green. and Henry Cuellar, appearing as plaintiff-intervenors:**[16]

a. Congresspersons Johnson, Jackson-Lee and Green:

These are Texas African-American voters and members of Congress who reside, vote in and represent the districts affected by the newly enacted congressional redistricting plans. Congresspersons Johnson, Jackson-Lee, and Green challenge the legality of C185, the congressional redistricting plan. They allege that the plan dilutes the voting strength of African-American voters and they will not have an equal opportunity to elect candidates of their choice to Congress. The Congresspersons contend the plan unnecessarily splits politically cohesive minority groups, and is designed to minimize or cancel out minority voting strength, both now and in the future. They claim that Plan C185 is the result, in whole or in part, of intentional discrimination.

Congresspersons Johnson, Jackson-Lee and Green assert a cause of action under Section 2 of the Voting Rights Act. They also assert a cause of action under 42 U.S.C. § 1983, based on allegations of intentional discrimination and violations of the one person, one vote principle embodied within the Fourteenth Amendment to the U.S. Constitution. They also state that Plan C185, like the other plans, cannot be implemented until precleared, pursuant to

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[16] The Congresspersons' live pleadings are their original complaints, Dkt. # 71 and Dkt. # 222.

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The Congresspersons seek declaratory and injunctive relief, and the recovery of fees and costs.

Congresspersons Johnson, Jackson-Lee and Green name the following as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and Hope Andrade, Secretary of State for the State of Texas. Defendants have filed an answer, generally denying most of the allegations and specifically asserting that the Congresspersons "lack standing" to pursue claims against the Lieutenant Governor and Speaker of the House.[17]

b. Congressman Henry Cuellar:

Congressman Cuellar is a Latino voter from Webb County, and serves as a member of Congress. He challenges the legality of Plan C185, the congressional redistricting plan. He claims that the 2010 census data severely undercounts Latinos and using such data undervalues the vote of Texas Latinos. He asserts that the population disparities far exceed the allowable deviation under the U.S. Constitution, and violate the one person, one vote principle. Congressman Cuellar alleges that Latinos and African Americans vote as a group and are politically cohesive, but their voting strength will be diluted under the newly enacted redistricting plan. He claims that Plan C185 violates the rights of Latino voters under Section 2 of the Voting Rights

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[17] The defendants' answer to the Congresspersons' original complaint is Dkt. # 193.

Act, as well as the Fourteenth and Fifteenth Amendments to the U.S. Constitution. He seeks declaratory and injunctive relief, and the recovery of his fees and costs.

Congressman Cuellar names as defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; and, Joe Straus, Speaker of the Texas House of Representatives. Defendants have not yet filed answer to Congressman Cuellar's complaint.

J. Intervenor/Cross-claimants Texas Democratic Party and Mr. Boyd Richie:[18]

The Texas Democratic Party (TDP) and its chairman, Boyd Richie, have intervened and have also filed a cross claim herein. They challenge the legality of Plan C 185, the congressional redistricting plan, Plan H283, the Texas House of Representatives redistricting plan. The TDP and Richie claim that the plans are blatant partisan gerrymanders that thwart majority rule. The plans were drawn in an invidious manner, and have no legitimate legislative objective. They allege that the plans violate the First and Fourteenth Amendments, and Article I, Sections 2 and 4 of the U.S. Constitution. They also note that the plans cannot be implemented until precleared under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. They seek declaratory and injunctive relief and the recovery of costs and fees.

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[18] The TDP and Boyd Richie's cross-claim is Dkt. # 55.

The TDP and Mr. Richie name Rick Perry, Governor of the State of Texas, and Hope Andrade, Secretary of State for the State of Texas, as cross-defendants. They have filed an answer to the cross claim, generally denying most of the allegations and specifically asserting the following defenses: (1) Eleventh Amendment immunity; (2) political gerrymandering is a nonjusticiable political question; (2) the Cross-claimants fail to state a claim for violations of the First Amendment; and (3) any claim under Section 5 is nonjusticiable.[19]

III.

Grounds asserted for dismissal or judgment on the pleadings

Defendants have moved for dismissal or, in the alternative, judgment on the pleadings on the following grounds:

1. Political gerrymandering claims are nonjusticiable;
2. Plaintiffs Morris, MALC, and the Texas Latino Redistricting Task Force lack standing;
3. There is no viable claim for census undercount;
4. Claims based on the use of census data on prisoners must be dismissed as a matter of law; and
5. Plaintiffs fail to allege a case or controversy against the Lieutenant Governor and Speaker of the House.

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[19] The cross-defendants' answer to the TDP and Richie's Crossclaim is Dkt. # 167.

The Court held a pretrial conference on September 1, 2011, and the parties were given an opportunity to present oral argument on the issues herein. After hearing arguments of counsel, the Court ruled, on the record, that the motion to dismiss all claims against Lieutenant Governor Dewhurst and Speaker Straus is GRANTED, and the motion to dismiss MALC's claims based on standing is DENIED. Thus, the Court will only address those issues that remain.

IV.

Standing

Defendants have moved for dismissal under Fed.R.Civ.P. 12(b) (1), claiming that plaintiffs Morris and the Latino Redistricting Task Force lack standing to assert their claims herein.

"In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Article III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 498-99 (1975). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Id.* at

501; Ass'n of American Physicians & Surgeons. Inc. v. Texas Medical Bd., 627 F.3d 547, 550 (5th Cir. 2010). To establish standing at the pleadings stage, general factual allegations of injury resulting from the defendant's conduct may suffice. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992).

1. **Plaintiff Morris:**

The State argues that plaintiff John T. Morris lacks standing to assert his vote dilution claim. The State concedes that Morris is a citizen, that he resides and is a registered voter in the Second Congressional District, and that his complaint concerns the effect of the redistricting plan on the Second Congressional District. (Dkt. # 209, P. 9). The State argues that Mr. Morris lacks standing because he is asserting the legal rights of third parties voters who were reapportioned to new congressional districts in surrounding counties—rather than his own. (Dkt. # 209, p. 9).

The State is incorrect. Morris does not argue that other persons' votes have been diluted. Morris contends that he has suffered an injury because his vote for his preferred candidate in his district has been diluted as a result of the redistricting plan.[20] That is a personalized injury sufficient to confer

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[20] While Mr. Morris doesn't express his political affiliation, the Court can fairly infer from his complaint that he identifies with the political party that was adversely affected by the redistricting. See. Vieth v. Pennvsvlvania, 188 F.Supp.2d 532, 540 (M.D. Pa. 2002) (a plaintiff that is a resident of the affected area and a member of an identifiable political group has standing to assert political gerrymandering).

standing.[21] The fact that his own vote has been allegedly diluted because some voters in his district have been moved to other districts is not an assertion of other voters' rights; it is only a factual assertion explaining how his own vote in his own district has been diluted. Mr. Morris has standing to assert his vote dilution claim, and the motion is DENIED on this issue.[22]

2. Latino Redistricting Task Force:

The State argues that the Latino Redistricting Task Force plaintiffs ("LRTF") lack standing to pursue certain claims. Plaintiffs alleging associational standing must demonstrate that: (1) the association's members, or any one of them, would have standing to sue in their own right; (2) the interests that the association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit.[23] Even when an association is involved, "Article III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." Warth, 422 U.S. at 501. In a redistricting case, this

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[21] United States v. Hays, 515 U.S. 737, 745 (1995) (a plaintiff that resides in the affected district and has allegedly suffered personal harm as a result of the legislature's action has standing to challenge such action).

[22] But see discussion and ruling in Section V, *infra*.

[23] Summers v. Earth Island Inst., 129 S. Ct. 1142, 1149 (2009) (holding that plaintiff bears the burden to prove standing); Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977) (stating requirements for associational standing).

means that the person must live in the district they challenge. Shaw v. Hunt, 517 U.S. 899, 904 (1996).

The State argues that the LRTF plaintiffs have failed to show that they live in some of the challenged districts, namely congressional districts other than 6, 12, 23, 27, and Texas House districts other than 32 and 78. (Dkt. # 209, pp. 13-14). The State asks for more factual specificity than is required at this stage of the litigation, however. It is true that, at the summary judgment stage, to establish associational standing, an organization must name specific members who would be, or have been, directly affected by the allegedly illegal activity and provide affidavits with specific facts supporting its allegations. Summers, 129 5. Ct. at 1151-52; Lujan, 504 U.S. at 561. But "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." Lujan, 504 U.S. at 561. The Task Force states that it represents "Latino registered voters of Texas who reside in areas where Latino voting strength has been diluted by newly-enacted plans H283 and C185, and Latino registered voters of Texas who reside in areas where Latino-majority districts should have been created but were not in plans H283 and C185." (Dkt. # 68, p. 4). By stating that it is asserting claims on behalf ofLatino members who reside in districts where Latino voting strength has been diluted or Latino-majority districts should have been created but were not, the Task Force has properly alleged that it is representing members who suffered an injury-in-

fact. That is sufficient at this stage of the litigation. Defendants' motion to dismiss LRTF's claims for lack of standing is DENIED.

V.

Political or partisan gerrymander claims

The Quesada plaintiffs and John T. Morris allege that the congressional redistricting plan is a partisan gerrymander in violation of Article I, Sections 2 and 4, and the First and Fourteenth Amendments of the U.S. Constitution.[24] The Texas Democratic Party ("TDP") and its chairman Boyd Richie allege that the congressional redistricting plan i the redistricting plan for the Texas House of Representatives are both unconstitutional political gerrymanders, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; Article I, Sections 2 and 4 of the U.S. Constitution; and the First Amendment to the U.S. Constitution.[25] The Perez plaintiffs occasionally use the words "political gerrymander" in their complaint, but, notwithstanding the State's allegations, they made clear in their response to the motion to dismiss that they are making those statements only in the context of one person, one vote claims, and not as an independent political gerrymandering claim.[26]

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[24] 24Dkt # 105; Dkt. # 7, filed in I 1-CV-615 prior to consolidation.

[25] 25Dkt. # 55.

[26] 26Dkt. # 227, p. 5 ("The Larios claims which embody both racial and political gerrymander issues are one person-one vote contentions.")

The State asserts that plaintiffs' partisan gerrymandering claims are nonjusticiable political questions under Vieth v. Jubelirer, 541 U.S. 267 (2004). The justiciability issue is reviewed under Rule 12(b)(1) because "[t]he concept of justiciablity, as embodied in the political question doctrine, expresses the jurisdictional limitations imposed upon federal courts by the 'case or controversy' requirement of Article III." Spectrum Stores. Inc. v. Citgo Petroleum Corp., 632 F.3d 938, 948 (5th Cir. 201 I)(quoting Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208 (1974)).

In Vieth, a plurality of the Court concluded that political gerrymandering claims are indeed nonjusticiable political questions because no judicially discernible and manageable standard for adjudicating such claims exists. *Id.* at 305-06 (plurality opinion). Justice Kennedy concurred in the judgment. He agreed that plaintiffs' political gerrymandering claim should be dismissed, but he would not "foreclose all possibility of judicial relief if some limited and precise rationale were found to" decide political gerrymandering claims in the future. *Id.* at 306 (Kennedy, J., concurring in the judgment). Justice Kennedy's opinion is controlling, because it is the "position taken by those Members [of the Court] who concurred in the judgments on the narrowest grounds." Alperin v. Vatican Bank, 410 F.3d 532, 552 n.1 3 (9th Cir. 2005) (quoting Marks v. United States, 430 U.S. 188, 193 (1977)). Because Justice Kennedy's opinion left the door open on future political gerrymandering claims, the Court finds that such a claim is justiciable and dismissal for lack of jurisdiction is not appropriate under Rule 12(b) (1).

However, the political gerrymandering claims are viable only if there is a reliable legal standard that can be applied in determining the issues herein. As Justice Kennedy noted, there is no "agreed upon model of fair and effective representation," so determining whether political classifications are related to a legitimate legislative purpose is an "analysis difficult to pursue." Vieth, 541 U.S. at 307 (Kennedy, J., concurring). Because "there are yet no agreed upon substantive principles of fairness in districting, [courts] have no basis on which to define clear, manageable, and politically neutral standards for measuring the particular burden a given partisan classification imposes on representational rights." [4 at 307-08. Absent agreed-upon principles of fairness, "the results from one gerrymandering case to the next would likely be disparate and inconsistent." *Id.*, at 308. Accordingly, absent a "standard by which to measure the burden [plaintiffs] claim has been imposed on their representational rights," they cannot "establish that the alleged political classifications burden those same rights," and their claim must be dismissed. Vieth, 541 U.S. at 313 (Kennedy,J., concurring); accord LULAC v. Perry, 548 U.S. 399, 418 (2006) (opinion of Kennedy, J.) ("[A] successful claim attempting to identify unconstitutional acts of partisan gerrymandering must. . . show a burden, *as measured by a reliable standard*, on the complainants' representational rights.") (emphasis added).

The non-movants were given an opportunity, but they have not, as required by Vieth and LULAC, identified a reliable standard by which to measure the redistricting plan's alleged burden on their

representational rights. Mr. Morris does not propose any standard by which to measure such a burden. Initially, the TDP and Quesada plaintiffs' proposal was that we "treat[] partisan gerrymandering cases much like obscenity casescourts will know one when they see one." (Dkt. # 231, pp. 1-2, 9). During oral argument at the pretrial conference, they proposed a "totality of the circumstances" standard. This does not meet the Supreme Court's expectation of a "clear, manageable, and politically neutral" standard. See Vieth, 541 U.S. at 307-08 (Kennedy, j., concurring). Because the non-movants have failed to enunciate a reliable standard, their political gerrymandering claims should be dismissed on the pleadings pursuant to Rule 12(c).[27]

The Quesada plaintiffs also argue in the alternative that a standard could be developed at trial. They argue that nothing injustice Kennedy's opinion forecloses that possibility. But that ignores the fact that the Court dismissed the claim at issue in Vieth based on the insufficiency of the complaint, because it did not allege a manageable standard. *Id.* at 313 (Kennedy, j., concurring) (citing Fed. R. Civ. P. 12(b)(6)). We are bound by that approach, which accords with the black-letter principle that a complaint must state a valid claim for relief for

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[27] See Vieth, 541 U.S. at 313 (Kennedy, j., concurring) (dismissing case under Federal Rule of Civil Procedure I 2(b)(6) for failure to state a claim). The State moved to dismiss the political gerrymandering claim for lack of subject-matter jurisdiction under rule 12(b)(1), rather than for failure to state a claim under rule 12(b)(6) or judgment on the pleadings under 12(c). But the Court may construe the motion, in part, as a motion under Rule 12(c).

litigation to move forward. Providing a "reliable standard" for measuring the burden on plaintiffs's representational rights is necessary to state a claim for relief for political gerrymandering, see LULAC, 548 U.S. at 418. These plaintiffs' failure to provide one requires dismissal of their claim. This ruling does not affect the Perez plaintiffs' allegations supporting their one person, one vote claim. The Perez plaintiffs alleged both political and racial gerrymandering in support of their one person, one vote claim. The applicable standard will be the standard for analyzing a one person, one vote claim

VI.

Claims involving census undercount

Defendants have also moved for judgment on the pleadings, pursuant to Fed.R.Civ.P. 12(c), on the claims involving census undercount. A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6). Doe v. MvSpace. Inc., 528 F.3d 413, 418 (5th Cir. 2008). Thus, the complaint must contain enough facts that, accepted as true, state a claim to relief that is plausible on its face. Ashcroft v. Igbal, 129 S.Ct. 1937, 1949 (2009).

MALC and LULAC claim that the State has violated Section 2 of the Voting Rights Act by relying on unadjusted 2010 Census data, which undercounts Hispanics and thus dilutes the Hispanic vote. The State asserts that neither MALC nor LULAC have standing to bring their claim because neither can establish traceability or redressability. Specifically, the State alleges that the claim must fail because the plaintiffs fail to demonstrate that (1) the census

data is flawed; (2) how the data could be improved through modification or an alternative method; and (3) whether any such improvements would actually strengthen the Hispanic vote.

MALC asserts that the alleged undercount is not a standalone claim, but rather one of many factual allegations used to support their Section 2 vote dilution claim. To support this argument, they refer to pages 14 and 15 of their second amended complaint, which says that the undercount, together with other factors, "all work together to result in a violation of the right of Plaintiff as secured by Section 2." (Dkt. # 50, pp. 14-15).

The State's only response to this argument is that the Court should still dismiss MALC's Section 2 claim "to the extent it is based on an alleged census undercount." However, Rule 12(c) motions are vehicles for the dismissal of implausible claims, not the preclusion of certain facts that are alleged to support the claim. A party should not be foreclosed at this juncture from presenting certain facts at trial for a claim that is otherwise viable. Defendants' motion to dismiss the claims involving census undercount is DENIED.

VII.

Claims relating to the use of census data on prisoners

Defendants move under Rules 12(b)(1) and 12(c) to dismiss the Perez plaintiffs' challenge to the newly enacted redistricting plans to the extent that

theit challenge hinges on the State's alleged misapplication of the prison population.[28]

First, the State asserts that the issue is a nonjusticiable political question. As acknowledged in District of Columbia v. Dep't of Commerce, 789 F. Supp. 1179 (DD.C. 1992), a significant difference of opinion exists as to whether certain applications of the census data, and challenges thereto, constitute a political question. We join in District of Columbia v. Dep't of Commerce and find that this case does not constitute a nonjusticiable political question such that the Court would be barred from hearing it.

On the other hand, Plaintiffs' arguments have no legal basis and dismissal is appropriate as a matter of law. The Texas Election Code states that prisoners are not residents, for voting purposes, of the county where they are incarcerated. TEX. ELEC. CODE ANN. § 1.015(e) (Vernon 2010). Nevertheless, the U.S. Census Bureau counts them as such, and the Texas Constitution requires use of the census count as the basis for redistricting. TEX. CONST. Art. III, § 26. Thus, the State of Texas complied with the dictates of the Texas Constitution. While the State could enact a constitutional amendment or statute that modifies the count of prisoners as residents of whatever county they lived in prior to incarceration, there is no federal requirement to do so.

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[28] These allegations are not the sole basis for the Perez plaintiffs' challenge to the plans under Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Thus, their cause of action will survive regardless of the Court's ruling on this issue.

Plaintiffs rely on Mahan v. Howell, 410 U.S. 315 (1973), for the proposition that the census count for prisoners must be adjusted, and the State's failure to make such adjustment resulted in greater population deviation and a violation of the one person, one vote principle. The Mahan case involved the counting of navy personnel attached to ships "home-ported" in a district as residents of that district, even though very few actually resided in that district. When the district court invalidated the plan, on other grounds, it drew a new plan and changed the method by which naval personnel were assigned to a district. The Supreme Court affirmed that decision, stating:

> We conclude that under the unusual, if not unique, circumstances in this case the District Court did not err in declining to accord conclusive weight to the legislative reliance on census figures. That court justifiably found that with respect to the three single-member districts in question, the legislative plan resulted in both significant population disparities and the assignment of military personnel to vote in districts in which they admittedly did not reside. Since discriminatory treatment of military personnel in legislative reapportionment is constitutionally impermissible, we hold that the interim relief granted by the District Court as to the State Senate was within the bounds of the discretion confided to it.

Mahan, 410 U.S at 331-32 (citation omitted)(emphasis added). The facts herein are

clearly distinguishable. We are dealing with prisoners in permanent facilities, not navy personnel on a ship. The Supreme Court was concerned with the discriminatory treatment of military personnel, and there are no allegations in this case regarding the discriminatory treatment of prisoners. Nor can the Supreme Court's review of the court-drawn redistricting plan in Mahan be compared to the Court's review of the legislative redistricting plans herein. As the Supreme Court noted in Mahan, the district courts are allowed to use their discretion and apply equitable considerations in drawing remedial redistricting plans. *Id.* at 332. In this case, the Texas legislature was required to use the census count as the basis for redistricting.

The Supreme Court has not extended its holding in Mahan to prison counts, and the Court has not located any case where any court has concluded that such prison counts violate the mandates of the one person, one vote principle. As the Fifth Circuit stated in Chen v. City of Houston, 206 F.3d 502, 528 (5th Cir. 2000), "in the face of the lack of more definitive guidance from the Supreme Court, we conclude that this eminently political question has been left to the political process." Defendants' motion to dismiss the Perez plaintiffs' claims is GRANTED, but only to the extent their claims are based on the State's alleged misapplication of the census data on prisoners.

VIII.

Conclusion

It is therefore ORDERED that Defendants' Motion to Dismiss for Lack of Subject Matter

Jurisdiction and, in the alternative, Motion for Judgment on the Pleadings (Dkt. #209) is GRANTED IN PART as follows:

1. The political gerrymandering claims asserted by the Quesada plaintiffs, John T. Morris, Boyd Richie and the Texas Democratic Party are DISMISSED for failure to state a reliable standard. This was the only cause of action asserted by Plaintiff John T. Morris and Cross-claimants Texas Democratic Party and Mr. Boyd Richie. Thus, their complaints are dismissed in their entirety.
2. The Perez plaintiffs' claim based on the use of census data on prisoners is DISMISSED as a matter of law.
3. All claims against the Lieutenant Governor and Speaker of the House have been DISMISSED.

The motion is DENIED in all other respects, and the remaining claims will proceed to trial. Because his claims have been dismissed, Mr. Morris is not required to appear at trial on the merits. The TDP and Boyd Richie's cross claims have also been dismissed, but Court does note that the Rodriguez plaintiffs named Boyd Richie as a defendant. They should re-visit their pleadings and determine whether there is any reason to keep Mr. Richie in the lawsuit as a named defendant. If not, all claims against Mr. Richie should be dismissed prior to commencement of trial.

SIGNED this 2d day of September, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.

On Appeal from the United States District Court for the Western District of Texas

JOINT APPENDIX, Vol. 2 of 5

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UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 08/31/11
Document 275

ORDER

Pending before the Court is Defendants' Motion for Partial Summary Judgment and supporting memorandum of law (Dkt. # 210). Plaintiffs have filed responses thereto (Dkt. # 226, 229, 230, 232, 233,236,237,239 and 242). Defendants have also filed a reply Dkt. #25 1). After reviewing the record and the applicable law, the Court finds that Defendants' motion should be granted in part on the Fifteenth Amendment claims, but otherwise denied.

I.

Statement of the case

This is a voting rights case arising out of recently enacted legislative redistricting plans. The decennial census was conducted last year, pursuant

to Article I, 2 of the U. S. Constitution. After the census figures were released, the State of Texas undertook redistricting efforts to apportion seats in the U. S. House of Representatives and the Texas House of Representatives. See U.S. CONST. Art. I, 2; see also TEX. CONST. Art. III, § 26.

The 82nd Texas Legislature enacted House Bill 150 ("H.B. 150"), which established a new redistricting plan for the Texas House of Representatives. ("Plan H283"). House Bill 150 was signed into law on or about June 17, 2011. The legislature also enacted Senate Bill 4 ("S.B. 4"), which established a new congressional redistricting plan for the State of Texas. ("Plan C185"). Senate Bill 4, as amended, was signed into law on or about July 18, 2011. A lawsuit for judicial preclearance of both plans has been filed and is currently pending in the U.S. District Court for the District of Columbia. The plaintiffs herein challenge the legality of the new redistricting plans and seek to enjoin Defendants from implementing the plans.

II.

The parties' claims and defenses

There are numerous parties to this consolidated action, and most of the pleadings have been amended since the inception of the lawsuit. The live pleadings, and the claims and defenses asserted therein, may be summarized as follows:

A. The Quesada plaintiffs:[1]

These plaintiffs include Margarita Quesada, Romeo Munoz, Marc Veasey, Jane Hamilton, Lyman King, John Jenkins, Kathleen Maria Shaw, Debbie Allen, Jamaal R. Smith, and Sandra Puente. They describe themselves as Hispanic and African-American citizens and registered voters that reside in current congressional districts 6, 9, 18, 20, 24, 26, 29, 30 and 33.

The Quesada plaintiffs challenge the legality of Plan C185, the congressional redistricting plan. They allege that the plan clearly dilutes the voting strength of African-American and Hispanic voters. They claim that the districts in Plan C185 are "racial gerrymanders" and the plan intentionally discriminates against Hispanic and African-American persons, in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. They also assert that Plan C185 is a "blatant partisan gerrymander," in violation of Article I, Sections 2 and 4 of the U.S. Constitution, and the First and Fourteenth Amendments to the U.S. Constitution. The Quesada plaintiffs allege that Plan C185 violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because minority voters are denied an equal opportunity to effectively participate in the political process and will not have any meaningful influence in elections for Members of congress in Texas. Finally, they assert that Plan C185 cannot be implemented because S.B. 4, as amended, has not been precleared

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[1] The Quesada plaintiffs' live pleading is their first amended complaint, Dkt. # 105.

pursuant to Section 5 of the Voting Rights Act. The Quesada plaintiffs request declaratory and injunctive relief and seek recovery of their costs and attorneys fees.

The Quesada plaintiffs name Rick Perry, Governor of the State of Texas, and Hope Andrade, the Texas Secretary of State, as Defendants. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: standing; immunity under the Eleventh Amendment; and, the cause of action under Section 5 of the Voting Rights Act is not justiciable.[2]

B. The MALC plaintiffs:[3]

The Mexican American Legislative Caucus ("MALC") is described as a non-profit organization established to serve members of the Texas House of Representatives that are elected from and represent constituencies in Latino majority districts. Many of the representatives elected to serve the districts are also Latino. Members of MALC are also registered voters in Texas, and participate in state and local elections.

MALC challenges the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. MALC claims that both plans far exceed permissible deviation limits and cannot be justified by legitimate state redistricting interests. MALC alleges that the

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[2] The Defendants' answer to the Quesada plaintiffs' first amended complaint is Dkt. # 195.

[3] The MALC plaintiffs' live pleading is their second amended complaint, Dkt. # 50.

Texas legislature employed racial gerrymandering techniques to dilute the voting strength of Hispanics and limit the number of districts in which Hispanics can elect candidates of their choice. MALC asserts a cause of action under 42 U.S.C. § 1983 for intentional discrimination and "discriminatory effect" in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. MALC also brings an equal protection claim under 42 U.S.C. 1983 for violations of the "one person, one vote" principle. MALC asserts a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, alleging that Defendants used racial gerrymandering to dilute Hispanic voting strength and avoid drawing minority opportunity districts when such districts were clearly justified under the circumstances. Finally, MALC contends neither plan can be implemented because they have not been precleared pursuant to Section 5 of the Voting Rights Act. MALC requests declaratory and injunctive relief, and seeks recovery of all costs and fees.

The named Defendants in MALC's complaint are: the State of Texas; Rick Perry, the Governor of the State of Texas; David Dewhurst, Lieutenant Governor for the State of Texas; and Joe Straus, Speaker of the Texas House of Representatives. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: standing; immunity under the Eleventh Amendment; and, ripeness.[4]

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[4] Defendants' answer to MALC's second amended complaint is Dkt. # 110.

C. The Latino Redistricting Task Force:[5]

The Latino Redistricting Task Force ("LRTF") describes itself as an unincorporated association of individuals and organizations committed to securing fair redistricting plans for Texas. The organizational members include Hispanics Organized for Political Education (HOPE), the Mexican American Bar Association, the National Organization for Mexican American Rights, the Southwest Voter Registration Education Project, the William C. Velasquez Institute, and the Southwest Workers' Union. The individual members are described as Latino registered voters who have been adversely affected by the dilution of Latino voting strength in the newly enacted redistricting plans.

The LRTF challenges the legality of Plan C185, the congressional redistricting plan, Plan H283, the Texas House of Representatives redistricting plan. As a result of the dramatic increase in the Latino population, which is geographically compact and politically cohesive, the creation of Latino-majority districts appeared axiomatic. However, the 821 Legislature allegedly packed and fractured Latino voters into districts that ensured a loss in voting strength. The LRTF claims that both plans discriminate against them, in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution. The LRTF asserts that both plans have the effect of "canceling out or minimizing" their voting strength as minorities and result in a denial or abridgement of their right to vote, in violation of

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[5] The Latino Redistricting Task Force plaintiffs' live pleading is their second amended complaint, Dkt. # 68.

Section 2 of the Voting Rights Act, 42 U.S.C. 1973. The LRTF also asserts that the plans cannot be implemented until they have received preclearance under Section 5 of the Voting Rights Act, 42 U.S,C. 1973c. The LRTF requests declaratory and injunctive relief, and seeks recovery of their costs and fees.

The LRTF names Rick Perry, Governor of the State of Texas, and Hope Andrade, Secretary of State for the State of Texas, as Defendants. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: standing and Eleventh Amendment immunity.[6]

D. The Perez plaintiffs:[7]

The Perez plaintiffs are individuals who reside and vote in various counties in the State of Texas and have been adversely affected by the newly enacted redistricting plans. The Perez plaintiffs challenge the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. They assert that the minority populations in many counties have been packed and/or fragmented for the purpose of diluting their voting strength. They claim that the plans are the result of racial and political gerrymandering and include population deviations well above constitutionally acceptable norms. They

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[6] Defendants' answer to the Latino Redistricting Task Force's second amended complaint is Dkt. # 132.

[7] The Perez plaintiffs' live pleading is their third amended complaint, Dkt. # 53.

also claim that the misapplication of the prison population resulted in even more dramatic population deviations. The Perez plaintiffs claim that these actions by the State violate Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. They seek declaratory and injunctive relief and recovery of their costs and fees.

The Perez plaintiffs name Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas, as Defendants. They filed answer, generally denying most of the allegations, and specifically assert the following defenses: (1) the classification of prisoners for purposes of redistricting is a nonjusticiable political question, which falls outside the Court's jurisdiction; (2) "political gerrymandering" is a nonjusticiable political question; (3) the Perez plaintiffs lack standing to challenge the classification of prisoners for purposes of redistricting; (4) the challenge to the classification of prisoners fails to state a claim upon which relief may be granted; (5) the Perez plaintiffs fail to state a claim against lieutenant Governor Dewhurst and Speaker Straus for which relief may be granted because they do not have the authority to alter the redistricting plan and/or prevent an election from going forward; and (6) Eleventh Amendment immunity.[8]

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[8] Defendants' answer to the Perez plaintiffs' third amended complaint is Dkt. # 131.

E. The Rodriguez plaintiffs:[9]

The Rodriguez plaintiffs include about twelve individuals who reside and vote in current congressional districts 10, 12, 15, 16, 18, 20, 21,25. All of the Rodriguez plaintiffs are minorities. The plaintiffs also include Travis County, Texas and the City of Austin, Texas.

The Rodriguez plaintiffs challenge the legality of Plan C185, the congressional redistricting plan. They claim that there were several areas of Texas in which majority-minority districts could have been created, based on the 2010 census data. Yet the Texas Legislature engaged in purposeful, race-based discrimination to ensure that the voting power of minority voters was diminished. They also assert that the Texas Legislature deliberately fractured the tri-ethnic coalition enjoyed by voters in Travis County and the City of Austin, and the legislature's blatant racial gerrymandering will effectively prevent minority voters from having any meaningful impact on congressional elections for the next ten years.

The Rodriguez plaintiffs bring causes of action under Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments to the U.S. Constitution. They further assert that Plan Cl 85 cannot be implemented until precleared, pursuant to Section 5 of the Voting Rights Act. They

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[9] The Rodriguez plaintiffs' live pleading is their first amended complaint, filed as Dkt. # 23 in Cause No. 11-CA-635 prior to consolidation.

seek declaratory and injunctive relief, and recovery of their costs and fees.

The Rodriguez plaintiffs name the following persons and entities as Defendants: Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas;Joe Straus, Speaker of the Texas House of Representatives; Hope Andrade, Secretary of State for the State of Texas; Boyd Richie, Chair of the Texas Democratic Party; and, Steve Munisteri, Chair of the Republican Party of Texas. The Defendants have filed an answer, generally denying most of the allegations and specifically asserting the following defenses: (1) the individual plaintiffs do not live in congressional district 27; thus, they lack standing to challenge the constitutionality of that district under Plan C185; (2) the Section 2 challenge to congressional districts that include Tarrant and Travis counties fails to state a claim upon which relief may be granted; (3) the Rodriguez plaintiffs cannot prove actual intent to discriminate based on race or ethnicity; (4) the Fifteenth Amendment claim must fail because the Rodriguez plaintiffs cannot prove that minorities are prevented from voting in congressional elections; (5) the Rodriguez plaintiffs lack standing to assert claims against Lieutenant Governor Dewhurst and Speaker Straus because their injuries are not traceable to them and neither the Lieutenant Governor nor the Speaker have the authority to take the corrective action being sought; and, (6) the Section 5 claim is nonjusticiable, as

Defendants do not intend to implement the Plan until preclearance is granted.[10]

F. Mr. John Morris. individually:[11]

Mr. Morris sued individually, on behalf of himself only. He describes himself as a resident and registered voter in the 2nd congressional district, which includes Harris County, Texas.

Mr. Morris challenges the legality of Plan C185, the congressional redistricting plan. He claims that the congressional district in which he resides was drastically changed as the result of partisan gerrymandering, effectively depriving him of his right to vote for the candidate of his choice. Plaintiff Morris asserts causes of action for violations of Article I, Section 2 of the U.S. Constitution and the Fourteenth Amendment to the U.S. Constitution. He seeks declaratory and injunctive relief, and recovery of any costs incurred herein.

Plaintiff Morris names Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas, as Defendants. They have filed an answer, generally denying the allegations and specifically asserting the defenses of standing and Eleventh Amendment immunity.

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[10] Defendants' answer to the Rodriguez plaintiffs' first amended complaint is Dkt. # 133.

[11] Plaintiff Morris' live pleading is his amended complaint, filed as Dkt. #7 in Cause No. 11-CA- 615 prior to consolidation.

G. Intervenor-plaintiff LULAC:[12]

LULAC is described as the oldest and largest national Hispanic civil rights organization, with a history of promoting voting rights on behalf of Hispanics and other minorities. Gabriel Rosales and others, who are individually named along with LULAC, are members of the organization. They are also registered voters in the State of Texas. They are collectively referred to as LULAC.

LULAC challenges the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. LULAC asserts that Hispanic growth exploded during the last ten years, as reflected in the 2010 census results. As a direct result of that growth, Texas was apportioned four new congressional districts. However, the Texas Legislature used racial gerrymandering to ensure that Hispanics would not be able to elect the candidate of their choice in any of the new districts. Plan H283 actually reduces the number of minority opportunity districts. LULAC claims that the plans dilute the voting strength of Hispanic and other minority voters, in violation of Section 2 of the Voting Rights Act. LULAC also claims that the State failed to accommodate the "undercount" of the Hispanic population in the census, further resulting in diminished voting strength in the Hispanic community. LULAC contends the plans contain substantial population disparities, in violation of the Fourteenth

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[12] LULAC's live pleading is its first amended and supplemental complaint, Dkt. # 78.

Amendment's equal protection clause and the one person, one vote principle.

LULAC brings its claims under 42 U.S.C. § 1983 for violations of the Fourteenth and Fifteenth Amendments, based on allegations of intentional discrimination, discriminatory effect, and violations of the one person, one vote principle. LULAC also brings a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, for dilution of minority voting strength. LULAC further contends that implementation of the plans prior to preclearance would violate Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. LULAC requests declaratory and injunctive relief and seeks recovery of its costs and fees.

LULAC names as Defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; and, Joe Straus, Speaker of the Texas House of Representatives. They have filed an answer, generally denying the allegations and specifically asserting the following defenses: (1) Eleventh Amendment immunity; (2) the claim under Section 5 of the Voting Rights Act is not justiciable; and, (3) LULAC "lacks standing" to pursue its claims against the Lieutenant Governor and Speaker of the House.[13]

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[13] The Defendants' answer to Plaintiff-Intervenor LULAC's first amended and supplemental complaint is Dkt. # 188.

H. Plaintiff-intervenor NAACP:[14]

The NAACP Plaintiff-intervenors include the Texas State Conference of NAACP Branches and individually named members and registered voters, including Howard Jefferson, Juanita Wallace, and Rev. Bill Lawson. They are referred to collectively as the NAACP plaintiff-intervenors.

The NAACP plaintiff-intervenors challenge the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. They contend that both plans dilute the voting strength of African-American voters. The 821 Texas Legislature was presented with plans that did not dilute minority voting strength, but rejected them. Instead, the Legislature enacted redistricting plans that split the minority voting bloc and preventing them from effectively participating in the political process. The NAACP plaintiff-intervenors allege that the newly-enacted plans were developed with the intent to disadvantage African-American and other minority voters. They alleged that the plans exceed permissible population variances, and clearly violate the one person, one vote principle. They also assert that the plans cannot be implemented until precleared, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

The NAACP plaintiff-intervenors assert a cause of action under 42 U.S.C. § 1983 for intentional discrimination and violations of the one person, one

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[14] Plaintiff-Intervenor NAACP's live pleading is its amended complaint, Dkt. # 69.

vote principle embodied within the Fourteenth Amendment to the U.S. Constitution. They also assert a cause of action under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, based on the dilution of minority voting strength. They also note that the plans cannot be implemented prior to preclearance, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The NAACP plaintiff-intervenors request declaratory and injunctive relief, and seek recovery of their costs and fees.

The NAACP plaintiff-intervenors name as Defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and, Hope Andrade, Secretary of State for the State of Texas. They have filed an answer, generally denying the allegations in the complaint and specifically asserting the following defenses: lack of standing and failure to state a claim against the Lieutenant Governor and Speaker of the House.[15]

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[15] Defendants' answer to the NAACP plaintiff-intervenors' amended complaint is Dkt. # 194.

I. **Congresspersons Eddie Bernice Johnson. Sheila Jackson-Lee. Alexander Green, and Henry Cuellar, appearing as Plaintiff-intervenors:**[16]

a. Congresspersons Johnson, Jackson-Lee and Green:

These are Texas African-American voters and members of Congress who reside, vote in and represent the districts affected by the newly enacted congressional redistricting plans. Congresspersons Johnson, Jackson-Lee, and Green challenge the legality of C185, the congressional redistricting plan. They allege that the plan dilutes the voting strength of African-American voters and they will not have an equal opportunity to elect candidates of their choice to Congress. The Congresspersons contend the plan unnecessarily splits politically cohesive minority groups, and is designed to minimize or cancel out minority voting strength, both now and in the future. They claim that Plan C185 is the result, in whole or in part, of intentional discrimination.

Congresspersons Johnson, Jackson-Lee and Green assert a cause of action under Section 2 of the Voting Rights Act. They also assert a cause of action under 42 U.S.C. 1983, based on allegations of intentional discrimination and violations of the one person, one vote principle embodied within the Fourteenth Amendment to the U.S. Constitution. They also state that Plan C185, like the other plans, cannot be implemented until precleared, pursuant to

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[16] The Congresspersons' live pleadings are their original complaints, Dkt. # 71 and Dkt. # 222.

Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The Congresspersons seek declaratory and injunctive relief, and the recovery of fees and costs.

Congresspersons Johnson, Jackson-Lee and Green name the following as Defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; Joe Straus, Speaker of the Texas House of Representatives; and Hope Andrade, Secretary of State for the State of Texas. Defendants have filed an answer, generally denying most of the allegations and specifically asserting that the Congresspersons "lack standing" to pursue claims against the Lieutenant Governor and Speaker of the House.[17]

b. Congressman Henry Cuellar:

Congressman Cuellar is a Latino voter from Webb County, and serves as a member of Congress. He challenges the legality of Plan C185, the congressional redistricting plan. He claims that the 2010 census data severely undercounts Latinos and using such data undervalues the vote of Texas Latinos. He asserts that the population disparities far exceed the allowable deviation under the U.S. Constitution, and violate the one person, one vote principle. Congressman Cuellar alleges that Latinos and African Americans vote as a group and are politically cohesive, but their voting strength will be diluted under the newly enacted redistricting plan. He claims that Plan C185 violates the rights of Latino voters under Section 2 of the Voting Rights

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[17] The Defendants' answer to the Congresspersons' original complaint is Dkt. # 193.

Act, as well as the Fourteenth and Fifteenth Amendments to the U.S. Constitution. He seeks declaratory and injunctive relief, and the recovery of his fees and costs.

Congressman Cuellar names as Defendants: the State of Texas; Rick Perry, Governor of the State of Texas; David Dewhurst, Lieutenant Governor of the State of Texas; and, Joe Straus, Speaker of the Texas House of Representatives. Defendants have not yet filed an answer to Congressman Cuellar's complaint.

J. Intervenor/Cross-claimants Texas Democratic Party and Mr. Boyd Richie:[18]

The Texas Democratic Party (TDP) and its chairman, Boyd Richie, have intervened and have also filed a cross claim herein. They challenge the legality of Plan C185, the congressional redistricting plan, and Plan H283, the Texas House of Representatives redistricting plan. The TDP and Richie claim that the plans are blatant partisan gerrymanders that thwart majority rule. The plans were drawn in an invidious manner, and have no legitimate legislative objective. They allege that the plans violate the First and Fourteenth Amendments, and Article I, Sections 2 and 4 of the U.S. Constitution. They also note that the plans cannot be implemented until precleared under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. They seek declaratory and injunctive relief and the recovery of costs and fees.

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[18] The TDP and Boyd Richie's Crossclaim is Dkt. # 55.

The TDP and Mr. Richie name Rick Perry, Governor of the State of Texas, and Hope Andrade, Secretary of State for the State of Texas, as Cross-Defendants. They have filed an answer to the cross claim, generally denying most of the allegations and specifically asserting the following defenses: (1) Eleventh Amendment immunity; (2) political gerrymandering is a nonjusticiable political question; (2) the Cross-claimants fail to state a claim for violations of the First Amendment; and, (3) any claim under Section 5 is nonjusticiable.[19]

III.

Grounds asserted for partial summary judgment

Defendants have moved for partial summary judgment on the following grounds:

1. All Fifteenth Amendment claims fail as a matter of law because none of the plaintiffs have been denied the right to vote;
2. Summary judgment should be granted on all Fourteenth and Fifteenth Amendment claims because there is no evidence of intent to discriminate;
3. Summary judgment should be granted on the Section 2 challenges to the congressional redistricting plan because Plaintiffs cannot meet the Gingles requirements; and
4. Summary judgment should be granted on the Section 2 claims to the extent the claim is based on census undercount.

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[19] The Cross-Defendants' answer to the TDP and Richie's Crossclaim is Dkt. # 167.

IV.

Claims under the Fifteenth Amendment

The Fifteenth Amendment to the United States Constitution provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV. The Fifteenth Amendment "establishes a national policy. . . not to be discriminated against as voters in elections to determine public governmental policies or to select public officials, national, state, or local." Terry v. Adams, 345 U.S. 461, 467 (1953). However, "the Supreme Court has rejected application of the Fifteenth Amendment to vote dilution causes of action" because "[w]hen a legislative body is apportioned into districts, every citizen retains equal rights to vote for the same number of representatives, even if not for all of them, and every citizen's ballot is equally weighed." Prejean Foster, 227 F.3d 504, 519 (5th Cir. 2000) (citing Reno v. Bossier Parish Sch. Bd., 528 U.S. 320, 334 n.3 (2000)). Plaintiffs herein claim that their voting strength has been diluted not that Defendants have prevented them from voting. Because the law does not recognize a claim under the Fifteenth Amendment for vote dilution, Plaintiffs' claims should be dismissed as a matter of law.

V.

Intentional discrimination under the Fourteenth Amendment; Section 2 challenge to the congressional redistricting plan; Section 2 claims based on census undercount

The Court has reviewed the record and the applicable law on the remaining issues raised in Defendants' motion. However, the Court finds that summary judgment would be improper at this juncture because the newly enacted redistricting plans that form the basis of this lawsuit are not yet precleared. Until preclearance is obtained, the redistricting plans are unenforceable and cannot be implemented. Lopez v. Monterey County, 519 U.S. 9, 20 (1996). Thus, a ruling on the merits of any claim challenging the plans would be premature and inappropriate at this stage of the proceedings.

It is therefore ORDERED that Defendants' Motion for Partial Summary Judgment and supporting memorandum of law (Dkt. # 210) is GRANTED in part on the Fifteenth Amendment claims, and such claims are DISMISSED as a matter of law. The motion is otherwise DENIED, and the remaining claims shall proceed to trial.

SIGNED this 31st day of August, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 10/07/11
Document 405

DEFENDANTS' ADVISORY REGARDING INTERIM REAPPORTIONMENT

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, "Defendants") respectfully file this Advisory in response to the Court's Order of September 30, 2011.

As a prefatory matter, the Defendants recognize, as the Court does, that "preclearance is

not a function of this Court," but respectfully take issue with the Court's suggestion that promptly filing a declaratory judgment proceeding before the United States District Court for the District of Columbia (instead of administratively before the Department of Justice), was, somehow, a less

streamlined and efficient method for seeking preclearance. In fact, having just observed the Justice Department interpose vague, unsupported objections to the House and Congressional plans in its sixtieth-day Answer before the D.C. District Court (which court orders have since twice required it to supplement for clarity), the State of Texas obviously chose the fastest route to preclearance. Indeed, from both its pleadings and its arguments before that court, the Justice Department appears to have determined to use the proceeding as a test case for novel – and previously-rejected – legal theories.

Moreover, waiting for Attorney General Holder's administrative response would have required a declaratory judgment to challenge it, which, in its best case, only now would have been in its first days.[1] Instead, the Section 5 three-judge panel has already set a hearing on the State's motion for summary judgment. The D.C. court has made clear that its focus, like this Court's, is on expedient resolution of the matters before it, so that the election process may proceed apace.

This Court has requested that the parties advise it regarding the appropriate action to take should it be required to implement an interim apportionment plan. While certain plaintiffs cited the Court to the multimember redistricting cases of Chapman v.

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[1] The Justice Department is also authorized to reserve its decision, and instead request "additional information," which it did on the sixtieth day of its consideration of changes to the voter identification laws enacted by the Texas Legislature. 42 U.S.C. § 1973c(a). Had it done so in this instance, even further delay would have ensued.

Meier, 420 U.S. 1 (1975), and McDaniel v. Sanchez, 452 U.S. 130 (1981), they unfortunately omitted the controlling case – and the Supreme Court decision most closely on point to the facts at bar – Upham v. Seamon, 456U.S. 37 (1982).[2] There, in a matter involving the 1981 Texas congressional plan, the Court rejected the notion that a district court may ignore the political decisions embodied in a legislative map that has not yet garnered preclearance. (The situation there was slightly different from the present one, in that the actual determination of preclearance will be made, in the first instance, by the D.C. District Court). The Upham three-judge panel had altered the two districts based on which preclearance had been denied, but also fixed a problem it perceived in the Dallas County apportionment. This was error, as it greatly exceeded the authority of a court already apprised of the legislative intent of the map-drawers. "In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'" Id. at 41-42 (citing *White v. Weiser*, 412 U.S. 783, 795 (1973)). In its brief opinion, the Upham Court examined the preceding decade's opinions on related subjects, and distilled a three-judge panel's interim map methodology into a single paragraph:

> Whenever a district court is faced with entering an interim reapportionment order

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[2] Indeed, the Supreme Court severely limited the scope of McDaniel a dozen years ago in *Lopez v. Monterey County*, 525 U.S. 266, 287 (1999).

> that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the Dallas County reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas Legislature.

456 U.S. at 43 (citing *Connor v. Finch*, 431 U.S. 407, 414 (1977)).

The Supreme Court then noted that it had previously permitted district courts to order elections to go forward based on interim, apportionment maps that had legal, and "even constitutional" infirmities, and remanded so that the district court could determine the best remedy. Id. at 44 (citing Bullock v. Weiser, 404 U.S. 1065 (1972); Whitcomb v. Chavis, 396 U.S. 1055 (1970)).

Bullock and Whitcomb provide a window into the propriety of using the legislatively adopted plan, on an interim basis, until a final plan is implemented. In Whitcomb, the district court essentially enjoined conduct of any elections for Indiana State Senate or State Representative, and instead directed use of a map that it had approved. The Supreme Court stayed enforcement of the order,

thus allowing elections based on the map the district court determined was unconstitutional, and upon which probable Court jurisdiction had already been noted. Whitcomb v. Chavis, 307 F. Supp. 1364 (S.D. Ind. 1969), jurisdiction noted, 397 U.S. 984, stayed, 396 U.S. 1055 (1970), rev'd and remanded, 403 U.S. 124, 140 (1971). Indeed, notwithstanding the district court's correct finding of unconstitutionality, it "erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so." 403 U.S. at 161.

The other case Upham cited favorably, Bullock v. Weiser, resulted in the 1972 Texas congressional elections being held pursuant to a plan that the Northern District of Texas had held to be unconstitutional. Once more, the Supreme Court stayed an injunction against the election, and once more, the Court eventually agreed with the district court that the plan was unconstitutional, but that its remedy was patently at odds with lawful, legislative state goals. White v. Weiser, 412 U.S. 783, 789, 797 (1973).

The compressed time often associated with redistricting, as well as the state-law limitations in convening legislatures, led Upham to note that "[n]ecessity has been the motivating factor in these situations." Applying that principle, the Upham Court afforded the Eastern District of Texas the odd choice (based on its local expertise) of once more re-drawing the plans, or of letting the elections go forward as planned, on the then-current maps. Needless to say, it did so in spite of the reversible error the Court had just adjudicated regarding those maps. 456 U.S. at 44.

The manner in which the Eastern District of Texas approached the "unwelcome obligation" of an interim solution to the 2001 Texas Senate and congressional maps in Balderas v. State, is extremely instructive. 2001 WL 34104833 & 34104836 (E.D. Tex.). There, the court had already held a Section 2 trial, much as this Court did, with -- as here -- the initial response from the United States coming the business day following the close of trial.3 (There, it was an administrative preclearance of the Senate plan, but a denial of preclearance of the congressional map. Here, similarly, the United States has interposed no objection to the Senate plan in its Answer -- although Section 5 intervenors have -- but has objected to certain congressional districts, which it claims indicate either discriminatory purpose or retrogressive effect.) While the Balderas maps were drawn by the Legislative Redistricting Board of Texas, rather than bythe Legislature, they were properly treated as legislative acts by the court.

The Balderas district court explained that it was required by Upham to limit its decision "to correcting the federal constitutional and statutory defects in the LRB House plan, including the concerns raised in the objection of the Justice Department." For purposes of the present action, the standard is the same, except that the dispositive determination regarding Section 5 preclearance will have been rendered by the D.C. District Court rather

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[3] Significantly, the Balderas trial did not begin until mid-November, 2001, and the Section 5 administrative preclearance determination was not rendered until November 16. This Court finds itself far ahead of that time sequence.

than the Justice Department, by the time this Court undertakes its reapportionment analysis. If, as the Defendants expect, the three-judge panel grants the State relief, the maps will have been precleared and only the remaining Section 2 issues, if any, will require redress. If not, then the Court will need to address the court's objections, but will be "limited to those necessary to cure any constitutional or statutory defect." Balderas (citing Upham, 456 U.S. at 43).

Applying that standard, the Eastern District of Texas implemented its changes by making discrete changes to the districts identified by the Justice Department in its preclearance objections, and leaving the rest of the map (save for districts slightly affected by bordering on the objected-to districts) alone. In Martinez v. Bush, the Southern District of Florida did precisely the same thing, adopting a proposed remedial map which had as few changes as possible. 234 F. Supp. 2d 1275, 1288 n.12 (S.D. Fl. 2002).

Other courts have addressed the exigency of interim relief in various ways. The Southern District of Georgia, in a three-judge decision related to Miller v. Johnson, 500 U.S. 900 (1995), issued a brief Order Granting Preliminary Injunction and Releasing Interim Redistricting Plan, so that elections could go forward, and followed it with a longer Order and Opinion about a month later. The court only addressed in its injunctive order the interim map, and, in it, effected changes only to districts that were conceded to be unconstitutional, or, as it explained in the Opinion, for which "Plaintiffs have made a showing of a substantial likelihood of prevailing on

the merits of their claim that those districts are unconstitutional." Johnson v. Miller, 929 F. Supp. 1529, 1542 n.33 (S.D. Ga. 1996) (citation omitted); Order, No. CV-194-40, dated April 30, 1996 (S.D. Ga.)(available at http://georgiainfo.galileo.usg.edu/ga-96dis.htm).

In Smith v. Clark, a three-judge panel, recognizing that no input had been received from the Department of Justice (rather, additional information had been requested, in a manner that would have pushed the congressional elections past their announced dates), drew its own map on an interim basis. The court expressly afforded no deference to legislative intent on the facts before it. Judge Jolly explained,

> The principle announced in Upham and White, and applied in Terrazas and Burton, does not apply in this case. This is true because, as of this date, no part of the plan adopted by the Chancery Court has been approved by the Attorney General. We think that, for purposes of deference, it is important to note that the plan adopted by the Chancery Court was drafted by the Intervenors (plaintiffs in Chancery Court), not by the Chancery Court, and not by the Mississippi Legislature, which failed to enact a congressional redistricting plan. Accordingly, there is no expression, certainly no clear expression, of state policy on congressional redistricting to which we must defer.

Smith v. Clark, 189 F. Supp. 2d 529, 533-34 (S.D. Miss. 2002)(citing Terrazas v. Clements, 537 F. Supp. 514 (N.D. Tex. 1982); Burton v. Hobbie, 543 F. Supp. 235 (M.D. Ala.), aff'd, 459 U.S. 961 (1982); Burton v. Hobbie, 561 F. Supp. 1029, 1034 (M.D. Ala. 1983)), aff'd sub nom. Branch v. Smith, 538 U.S. 254 (2003)). Here, of course, the Legislature has spoken, and even the Department of Justice, as a litigant, has circumscribed the limits of its potential concerns in the Answer it filed as defendant in the Section 5 proceeding.

To the extent there is a difference between interim and remedial map-drawing, Upham identified it. Absent a patent one-person, one-vote failing or other manifest constitutional error, this Court is wholly permitted to use the legislature's lawfully-enacted map as its interim plan, unless the Section 5 three-judge panel expressly denies preclearance of the map. At present, the Justice Department's objections are of a different variety than those it would announce administratively; it has simply filed an unsupported Answer in a lawsuit that has yet to be adjudicated, and thus, on an interim basis, the map is well-suited to meet a temporary need. Such pleadings are entitled to no deference by this, or any, Court. Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 213 (1988); Gossett, David M., Chevron, Take Two: Deference to Revised Agency Interpretations of Statutes, 64 U. Chi. L. Rev. 681, 691 & n.49 (1997) ("Arguments that an agency makes in the course of litigation are a classic example of a type of 'interpretation' that does not receive deference under Chevron."). The principle is especially apt in the instant action, given

that the Department of Justice has still to articulate the substantive bases of its averments. In that light, the wary approach that courts have long used in venturing into matters more properly the province of legislatures, will best be implemented by using the legislatively-enacted map as its interim.

Finally, to the extent the Court determines a need to generate interim plans, the experience of the State of Texas, based in no small part on the acknowledged expertise of the Texas Legislative Council and its RedAppl software, is that the actual process could be undertaken in less than two days, once the Court has received submissions and heard the testimony of the parties. Generously assuming that a hearing on the matter could be conducted in no more than three days, the Court can reasonably expect that the entire process could be done in a week's time.

The State Defendants remain confident that the Section 5 proceeding will conclude well prior to the dates by which finalized maps will be necessary for implementation, and will continue to keep the Court apprised of the status of that litigation.

Dated: October 7, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 10/17/11
Document 436

DEFENDANTS' ADVISORY REGARDING INTERIM MAPS

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, "Defendants") respectfully file this Advisory in response to the Court's Amended Order of October 4, 2011.

For the reasons set forth in the Defendants' Advisory filed October 7, 2011, they propose using the legislatively-enacted State House and Congressional maps as the bases for any relief that this Court may deem necessary on an interim basis. Those maps are the only legislatively approved memorialization of the intent of the State of Texas, which is due great deference when the judiciary

intercedes in the province of the legislative branch. As noted in the earlier Defendants' Advisory, such maps are appropriate for interim designation, having neither been formally objected to by the Department of Justice nor the subject of a United States District Court for the District of Columbia order rejecting them.

Moreover, the Defendants remain confident that the Section 5 proceeding will conclude well prior to the dates by which finalized maps will be necessary for implementation, and will continue to keep the Court apprised of the status of that litigation.

Dated: October 17, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 10/24/11
Document 468

DEFENDANTS' OBJECTSION TO PROPOSED INTERIM PLANS

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, "Defendants") respectfully file these Objections to the interim redistricting plans proposed by Plaintiffs. Defendants have reviewed Plaintiffs' proposals in as much depth as possible in the limited time available and reserve their right to raise additional objections if necessary.

I. Introduction

Plaintiffs' proposed interim plans are obviously not tailored to correct the supposed constitutional and statutory violations alleged in their complaints. Rather than creating plans designed to actually

resolve statutory and constitutional infirmities, Plaintiffs have created plans designed to effect political outcomes they were unable to accomplish during the legislative session. This conflicts directly with the Supreme Court's command in Connor v. Finch and Upham v. Seamon that an interim plan must "reconcil[e] the requirements of the Constitution with the goals of state political policy." Upham v. Seamon, 456 U.S. 37, 43 (1982) (quoting Connor v. Finch, 431 U.S. 407, 414 (1977)). The political goals of the State of Texas are embodied in the Legislature's duly enacted redistricting plans. These are the only political goals that may be advanced in an interim redistricting order, and they are entitled to substantial deference. The "unwelcome" obligation to impose an interim redistricting plan is not an occasion for third-party interest groups and outvoted members of the Legislature to accomplish their own political goals through litigation. Plaintiffs' clear attempt to do so, like their contention that the Court may start from a "blank slate," is utterly baseless.

II. In Drawing an Interim Plan, the Court Must Not Alter the Legislatively Enacted Plan Unless Necessary to Cure a Violation of the Constitution or the Voting Rights Act.

Plaintiffs advise the Court that it is not only free but required to disregard the political choices of the Texas Legislature in an interim reapportionment order. Plaintiffs' position is directly contrary to the Supreme Court's clear instruction in Upham v. Seamon and relies on cases that are legally and factually distinguishable. In fashioning an interim

redistricting order, a district court is not free to disregard a state's legislative determinations unless necessary to (a) cure a constitutional violation, (b) cure a federal statutory violation.

In Upham v. Seamon, the Supreme Court held that court-drawn interim redistricting plans must conform to legislatively enacted plans except as necessary to "cure any constitutional or statutory defect." Upham, 456 U.S. at 42. In Upham, a three-judge court in the Northern District of Texas was compelled to impose an interim congressional reapportionment plan after the U.S. Attorney General objected to the Legislature's enacted plan. The Attorney General's objection identified only two congressional districts and concluded that the State "had satisfied its burden of demonstrating that the submitted plan is nondiscriminatory in purpose and effect" with respect to all other districts. *Id.* at 38. Nevertheless, the Attorney General's objection rendered the entire plan unenforceable. *See id.* at 38 n.1. The district court ordered an interim reapportionment plan that altered congressional districts 15 and 27 in South Texas—the two districts to which the Attorney General had objected—and made additional changes to four districts in and around Dallas County. *See id.* at 38–40; *see* also Seamon v. Upham, 536 F. Supp. 931, 959–961 (E.D. Tex. 1982) (describing each district in the court's interim plan).

On appeal, the Supreme Court held that the district court's alteration of the Dallas-area congressional districts was erroneous, even though the plan had not been precleared, because the court altered the legislatively enacted plan without finding

a constitutional or statutory violation. The court recognized the fundamental principle that "[i]n fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'" Upham, 456 U.S. at 41–42 (citing White v. Weiser, 412 U.S. 783, 795 (1973)). The Court provided clear guidelines for interim redistricting orders:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas Legislature.[1]

Id. at 43 (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)).

Contrary to Plaintiffs' suggestion, Balderas v. Texas did not depart from this rule. Rather, it recognized the well-established limitation on a

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[1] *Upham v. Seamon*, 456 U.S. 37, 43 (1982) (per curiam) (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)).

district court's discretion in providing an interim remedy when a state's redistricting plan has been submitted for preclearance but not approved by the Department of Justice or the U.S. District Court for the District of Columbia. In its remedial order creating an interim plan for the Texas House of Representatives, the Balderas court expressly recognized the limits on its discretion:

> Our decision here is limited to correcting the federal constitutional and statutory defects in the LRB House plan, including the concerns raised in the objection of the Justice Department. That approach is dictated by the Supreme Court's decision in Upham v. Seamon.

Balderas v. Texas, 2001 WL 34104833, at *2 (E.D. Tex. Nov. 28, 2001) (footnotes omitted). Thus Balderas does not support the Task Force Plaintiffs' contention that a district court starts "from a blank slate"—i.e., ignores the legislatively enacted plan—whenever it draws an interim redistricting plan. Their citation to the congressional redistricting claims in Balderas is inapposite because the Legislature did not pass a congressional plan in 2001. *See*, e.g., LULAC v. Perry, 538 U.S. 399, 411 (2006). To the extent the court started from a "blank slate," it did so because there was no legislative enactment to consider.

Plaintiffs' reliance on Lopez v. Monterey County, 519 U.S. 9 (1996), is misplaced. Lopez involved a section 5 enforcement action brought to challenge county ordinances that had been in place for several years but were never submitted for

preclearance, even after the court ordered the county to do so. *See id.* at 14–15, 17–18. Rather than *seek* preclearance, the county attempted to implement a permanent remedial plan in the pending litigation in the hopes of avoiding section 5 preclearance altogether. *See id.* at 16–19. The district court eventually ordered county-wide, at-large elections as a remedy, thus reinstating the previously enjoined electoral practice without any preclearance review. *See id.* at 18–19. Reversing, the Supreme Court emphasized that the district court failed to accomplish "the goal of a three-judge district court facing a § 5 challenge," which is "to ensure that the covered jurisdiction submits its election plan to the appropriate federal authorities for preclearance as expeditiously as possible." Id. at 24. Because Lopez involved a permanent remedial plan rather than an interim plan, the Court did not rely on the authorities governing such plans, including Upham.[2]

The harm to be avoided in Lopez was that covered jurisdictions might avoid preclearance altogether. The risk of circumventing preclearance was also present in McDaniel v. Sanchez, 452 U.S. 130 (1981), in which the Court held that redistricting plans submitted to courts by covered jurisdictions after legislative plans are held to be unconstitutional are subject to preclearance. The Court warned that

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[2] Moreover, nothing in Lopez suggests that the Court intended to overrule Upham. If it had, it would have done so without discussion, thus silently reversing its position on a fundamental aspect of reapportionment law. Given the distinction between the cases, and Lopez's cf. citation to Upham, see 519 U.S. at 24, there is no reason to believe that it did.

> if covered jurisdictions could avoid the normal preclearance procedure by awaiting litigation challenging a refusal to redistrict after a census is completed, the statute might have the unintended effect of actually encouraging delay in making obviously needed changes in district boundaries.

Id. at 151. The same danger of circumventing preclearance review is not present when, as in Upham and this case, the submitting jurisdiction has already initiated preclearance before the district court considers an interim plan.

In this case, as in Upham, the Texas Legislature has enacted a redistricting plan; the State has submitted the plan for preclearance; the U.S. Attorney General has raised objections to the plan, though they have not been resolved; the plan has not been precleared; and the Court faces the task of ordering an interim plan for upcoming elections.[3] The only potential distinction between this case and Upham is the State's choice in this case to seek judicial preclearance, rather than administrative preclearance as in Upham. If anything, that distinction counsels increased deference to the policy judgments expressed in the State's legislatively enacted redistricting plans. Whereas administrative

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[3] This case resembles Upham for the further reason that in both cases, private parties challenged the Legislature's redistricting plan under the Constitution and section 2 of the Voting Rights Act. See Upham, 456 U.S. at 38 (noting that a lawsuit asserting constitutional and section 2 challenges was filed in the Northern District of Texas while preclearance was pending).

preclearance would result in an administrative determination by the Justice Department, the Justice Department's only statements in the pending judicial preclearance proceeding are the unsupported allegations in its answer, which are entitled to no deference. See Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 213 (1988).

III. Objections to Proposed Congressional Plans

A. Plaintiffs' Proposed Congressional Redistricting Plans Fail to Create Additional Majority-Minority Districts Without Subordinating Traditional Redistricting Principles to the Goal of Maximizing Race-Based Districts.

In drawing an interim redistricting plan, the Court must defer to the State's policy choices, as reflected in its legislatively enacted plans, except where necessary to remedy a violation of federal law. See, e.g., Upham v. Seamon, 456 U.S. 37 (1982). Any court-drawn plan must, of course, comply with federal law, including both section 2 and section 5 of the VRA and the Constitution. See, e.g., Johnson v. Miller, 929 F. Supp. 1529, 1562 (S.D. Ga. 1996) (citing cases). In order to justify the creation of an additional "majority-minority" district in an interim redistricting plan, the Court must identify a violation of section 2 of the VRA which would require such a district as a remedy. Plaintiffs must first prove that the Legislature could have drawn additional geographically compact congressional districts where a politically cohesive minority group would constitute the majority of eligible voters

without violating generally applicable law or subordinating traditional redistricting principles. See, e.g., Bartlett v. Strickland, 129 S. Ct. 1231, 1242–45 (2009). If section 2 would not compel the State to draw a district in the first place, it is not properly implemented as part of a court-drawn interim plan. Moreover, a court-drawn plan must comply with the Constitution; thus, an interim plan may not create districts based predominantly on race. See, e.g., Abrams v. Johnson, 521 U.S. 74, 91 (1997) (approving the district court's finding that creating "a second majority-black district in Georgia would require subordinating Georgia's traditional districting policies and allowing race to predominate").

Plaintiffs ask the Court to issue an interim reapportionment order creating additional districts in which Latinos, a combination of Latinos and African-Americans, or, in one case, a "tri-ethnic coalition" of Latinos, African-Americans, and Anglos would constitute a majority or super-majority capable of controlling the outcome of elections. Each and every one of Plaintiffs' proposed interim plans suffers from one or both of the following defects: (1) Plaintiffs cannot establish the facts required to support the first Gingles factor—that a minority group is sufficiently large and geographically compact to constitute a majority in a single member district, see Exhibit B; and (2) each district proposed by Plaintiffs is drawn predominantly on the basis of race in violation of the Fourteenth Amendment. Further, as explained in the Defendants' posttrial briefs, the evidence at trial shows that Plaintiffs cannot satisfy the remaining elements of a section 2

vote-dilution claim in any region of the State, nor have they established a constitutional violation in the congressional or House redistricting plans. Because Plaintiffs cannot identify a constitutional or statutory violation in the State's redistricting plans, they are not entitled to interim relief.

B. Defendants' Objections to Proposed Congressional Redistricting Plans

1. Plan C211 (MALC)

Defendants object to proposed Plan C211 on the grounds that it fails to create more Latino opportunity districts than Plan C185, it contains coalition districts that are not required by section 2, and it disregards the political choices of the Texas Legislature for no reason other than to advance MALC's own political objectives. Plan C211 does not remedy any alleged constitutional or statutory violation in Plan C185.

Plan C211, proposed by MALC, deviates from the State's plan in order to create additional majority-minority districts. In particular, it purports to create the following 9 Latino opportunity districts: (1) District 15 with 70.0% HCVAP; (2) District 16 with 67.4% HCVAP; (3) District 20 with 60.0% HCVAP; (4) District 23 with 60.1% HCVAP; (5) District 27 with 70.5% HCVAP; (6) District 28 with 52.2% HCVAP; (7) District 29 with 56.3% HCVAP; (8) District 33 with 52.9% HCVAP; and (9) District 34 with 56.5% HCVAP.

Although MALC's proposed plan appears to create one more Latino-majority district than Plan C185, Plan C212 contains two districts that are

plainly not required by section 2 of the VRA, and that largely mirror the one district the Supreme Court found not to qualify as a section 2 district in LULAC v. Perry. Specifically, CD 28 and CD 33 both begin at the Texas-Mexico border, in Webb and Hidalgo County, respectively, and travel north in narrow strips to Travis County. These districts are not reasonably compact, and they combine communities across more than 300 miles that have little in common except Latino residents, suggesting that they were drawn predominantly on the basis of race. In any event, these districts are plainly not required by or consistent with section 2. With these problematic districts eliminated, Plan C211 creates two fewer Latino opportunity districts than Plan C185. Assuming that the two districts could be combined or altered to create a single Latino opportunity district, Plan C211 would still create fewer Latino opportunity districts than the State's plan.

Plan C211 also attempts to create District 34, which runs from Travis County to Bexar County. The creation of District 34 reduces the HCVAP strength in District 20 to 60.0% as compared to the 62.9% in District 20 in Plan C185. Further, MALC claims that Plan C211 creates two additional minority opportunity districts in Dallas-Fort Worth, but these are only coalition districts. District 25 has 15.2% HCVAP and 35.9% BVAP, and District 32 has 45.5% HCVAP. District 32 also suffers from compactness scores that are higher than any of the districts in Plan C185. See Exhibit A, Declaration of Todd Giberson ¶ 7. Neither district is required to be created under section 2. Plan C211 is also

problematic in that Nueces County is split between Districts 10 and 27. This decision ignores the Legislature's political choice to keep Nueces County whole and allow it to be the anchor of its own congressional seat. See Trial Tr. at 1022:10–14, 1022:17–18, 1461:25–1462:7; see also Exhibit J-58, Deposition of Doug Davis, at 90:10–21; Exhibit J-61, Deposition of Gerardo Interiano I, at 113:20–22.

2. Plan C213 (Texas Latino Redistricting Task Force)

Defendants object to Plan C213 because, while it is offered as ostensibly justified on racial grounds under section 2, it actually fails to create more Latino opportunity districts than Plan C185; it transforms an existing Latino opportunity district into a coalition district solely to pursue the Task Force Plaintiffs' political objective of creating a Latino-majority district in a different area of the State; and it creates a coalition district in Dallas and Tarrant County that is not only not required by section 2 but also gives rise to a strong inference that it was created predominantly on the basis of race in violation of the Fourteenth Amendment.

Plan C213 was proposed by the Latino Task Force for the purpose of creating 8 Latino opportunity districts: (1) District 15 with 69.6% HCVAP; (2) District 16 with 73.2% HCVAP; (3) District 20 with 63.0% HCVAP; (4) District 23 with 66.6% HCVAP; (5) District 27 with 65.9% HCVAP; (6) District 28 with 69.6% HCVAP; (7) District 35 with 52.1% HCVAP; and (8) District 36 with 50.1% HCVAP. For instance, it creates District 36 in Harris County, but it accomplishes this by dismantling

current District 29, which is a Latino opportunity district held by Congressman Gene Green. Finally, any claim that Plan C213 creates a minority opportunity district in Dallas-Fort Worth is not true. District 34 has only 45.0% HCVAP and is, at most, a coalition district that is not required under section 2. Even if such a district were arguably required, District 34 is less compact than any district in Plan C185 and has one of the highest compactness scores of all Dallas-Fort Worth congressional districts in Plaintiffs' proposed interim plans. See Exhibit A, Giberson Declaration ¶ 10.

3. Plan C166 (Rodriguez Plaintiffs)

Defendants object to Plan C166 on the grounds that it actually creates fewer Latino opportunity districts than Plan C185, and it purports to create coalition districts that are not required by section 2.

Plan C166 was proposed by the Rodriguez Plaintiffs and purports to create the following 7 Latino opportunity districts: (1) District 15 with 66.1% HCVAP; (2) District 16 with 76.5% HCVAP; (3) District 20 with 64.9% HCVAP; (4) District 23 with 57.9% HCVAP; (5) District 27 with 69.2% HCVAP; (6) District 28 with 57.5% HCVAP; and (7) District 33 with 63.3% HCVAP. The State objects to this plan because it creates one less Latino opportunity district than Plan C185. Additionally, Plan C166 attempts to create coalition districts in both Dallas-Fort Worth and Harris County. Neither District 35 nor District 36 has a majority citizenship voting age population of any single racial or ethnic group. Additionally, District 35 is less compact than any district in Plan C185. See Exhibit A, Giberson

Declaration ¶ 9. Plan C166's goal appears to be the preservation of District 25, which Plaintiffs concede is a crossover district with no lawful claim to protection under section 2. As discussed in Defendants' post-trial briefs, the State is not required to create such a district under Bartlett and is under no heightened obligation to preserve such a district absent a showing of intentional racial discrimination. See Bartlett, 129 S. Ct. at 1249. For these reasons, the State objects to Plan C166.

4. Plans C204 and C205 (Quesada Plaintiffs)

Plans C204 and C205 were proposed by the Quesada Plaintiffs for the purpose of creating additional minority-majority districts. Plan C204 purports to create the following 8 Latino opportunity districts: (1) District 15 with 67.7% HCVAP; (2) District 16 with 74.8% HCVAP; (3) District 20 with 58.1% HCVAP; (4) District 23 with 70.8% HCVAP; (5) District 27 with 71.6% HCVAP; (6) District 28 with 70.5% HCVAP; (7) District 29 with 57.1% HCVAP; and (8) District 33 with 56.2% HCVAP. The State objects to Plan C204 because it does not create any more Latino opportunity districts than Plan C185, it proposes changes that merely effect political choices different from those made by the Legislature, and it seeks to establish coalition districts in certain regions of the state. For instance, Plaintiffs' claim that District 34 is a Latino opportunity district is incorrect. District 34 has only 44.8% HCVAP, 11.4% BVAP, and 21.1% AVAP, and is thus a coalition district. District 34 is also less compact than any district in Plan C185. See Exhibit A, Giberson Declaration ¶ 8. Plaintiffs also claim that Plan C204

creates an additional African-American district, but District 35 is not a majority-minority district given that it has 15.2% HCVAP, 35.9% BVAP, and 33.9% AVAP. Crossover or coalition districts, like Districts 34 and 35, are not protected under section 2 of the VRA. See Bartlett, 129 S.Ct. at 1248.

Plan C205 is nearly identical to Plan C204 and purports to create the following 8 Latino opportunity districts: (1) District 15 with 67.7% HCVAP; (2) District 16 with 74.8% HCVAP; (3) District 20 with 58.1% HCVAP; (4) District 23 with 70.8% HCVAP; (5) District 27 with 71.6% HCVAP; (6) District 28 with 70.5% HCVAP; (7) District 29 with 57.1% HCVAP; and (8) District 33 with 56.2% HCVAP. The State objects to this plan for the same reasons set forth above. Once again, District 34 and District 35 are not majority-minority districts. Instead, District 34 has only 37.2% HCVAP, 12.4% BVAP, and 26.4% AVAP. District 35 has only 16.2% HCVAP, 36.3% BVAP, and 30.7% AVAP.

5. Plan C193 (NAACP and Congressional Intervenors)

Plan C193, proposed by the NAACP Plaintiffs and Congressional Intervenors, is a partial statewide map. The State objects to this plan because, although it is racially motivated, it creates fewer minority opportunity districts than Plan C185. For instance, Plan C193 purports to create a minority opportunity district in Dallas-Fort Worth, but Districts 34 and 35 are both coalition districts. District 34 has 15.8% HCVAP and 32.6% BVAP. District 35 has 44.6% HCVAP and 32.6% BVAP, and it suffers from having the highest compactness score

out of all the districts in Plaintiffs' proposed interim plans. See Exhibit A, Giberson Declaration ¶ 11. Plan C193 also fails to create a Latino opportunity district in Central Texas like Plan C185. Instead, Plan C193 creates District 28, which has only 48.2% HCVAP. Finally, Plaintiffs state that they endorse the Travis County configuration as set forth in Plan C164. The State objects to such a configuration because Plaintiffs merely make different political choices than the Legislature and have failed to show that District 25 is legally protected. Furthermore, Plan C164's configuration for Travis County fails to take into account the significant population growth that occurred in the region between Travis County and Bexar County.

6. Plans C206, C207, C208, and C214 (LULAC Plaintiffs)

Plans C206, C207, and C208 were proposed by the LULAC Plaintiffs. Plan C208 is one of the statewide plans proposed by LULAC and seeks to create the following 7 Latino districts: (1) District 15 with 66.2% HCVAP; (2) District 16 with 72.6% HCVAP; (3) District 20 with 66.2% HCVAP; (4) District 23 with 67.1% HCVAP; (5) District 27 with 59.4% HCVAP; (6) District 28 with 62.4% HCVAP; and (7) District 35 with 61.7% HCVAP. The State objects to this Plan because, although it is based predominantly on race, it creates fewer Latino opportunity districts than Plan C185, does not have a zero percent population deviation, and creates several problematic districts.

First and foremost, unlike Plan C185, Plan C208 fails to create a new district in Central Texas that

reflects the significant population growth in this region. Instead, Plan C208 appears to create two new districts in Dallas-Fort Worth and Harris County, but neither of these districts satisfies the first precondition of Gingles. District 36 in Plan C208 in Harris County is not a Latino opportunity district because it has only 45.4% HCVAP. This proposed district is nothing more than a coalition district, which the State is not required to create under section 2. Further, Plaintiffs were only able to create District 36 by dismantling a protected Latino opportunity district—District 29 in Plan C100—which is currently held by Congressman Gene Green. Likewise, although Plan C208 seeks to create District 33 in Dallas-Fort Worth, this is also a coalition district given that it has only 38.6% HCVAP and 14.6% BVAP.

Additionally, other districts in Plan C208 do not satisfy the requirements of Gingles. District 27 runs all the way from Cameron County in the Rio Grande Valley, snakes around Nueces County to include only the coastal portion, and then continues up to Caldwell County in Central Texas. This district is similar to the one the Supreme Court struck down in LULAC v. Perry in that it purports to connect communities across several hundred miles that have little in common but for the fact that Latinos live in each region. Furthermore, District 27 has compactness scores that are more than two times higher than the compactness scores of Plan C185's District 27. See Exhibit A, Giberson Declaration ¶ 6. Finally, Plan C208 seeks to correct alleged violations of the Fourteenth Amendment through, among other things, a new configuration for District 26. This

Court should reject such proposed changes because Plaintiffs have not demonstrated that the Legislature drew any districts with the intent to discriminate on the basis of race.

Plan C214 is another statewide plan proposed by LULAC and seeks to create the following 7 Latino opportunity districts: (1) District 15 with 65.2% HCVAP; (2) District 16 with 72.6% HCVAP; (3) District 20 with 65.9% HCVAP; (4) District 23 with 67.4% HCVAP; (5) District 27 with 59.4% HCVAP; (6) District 28 with 63.2% HCVAP; and (7) District 35 with 61.7% HCVAP. The State objects to this plan because it creates fewer Latino opportunity districts than Plan C185, and the districts it proposes fail to satisfy Gingles. Similar to Plan C208, Plan C214 dismantles District 29 in Harris County, which is a protected Latino opportunity district, in order to create a coalition district. The plan also creates a similar noncompact District 27 that covers several hundred miles and connects communities in different regions of the state that have little in common. See Exhibit A, Giberson Declaration ¶ 6.

Plans C206 and C207 are partial statewide plans that purport to create a new congressional district in Dallas-Fort Worth. However, District 35 in Plan C207 and District 33 in Plan C206 are not required by section 2 because they are coalition districts. District 35 has only 40.4% HCVAP and 12.6% BVAP. District 33 has only 39.3% HCVAP and 14.9% BVAP. The State therefore objects to Plan C206 and C207.

7. Partial Plan Proposed by Congressman Henry Cuellar

Congressman Cuellar has proposed a partial plan that outlines his proposal for District 28 and South Texas. Because this plan has not been uploaded to RedAppl, the State does not have the necessary data to fully analyze this plan. Nevertheless, based on the information available, the State objects to his plan because it makes changes to District 23 that would not adhere to traditional redistricting principles by protecting the incumbent, Francisco Canseco. This plan also purports to create District 33 as a new Latino opportunity district, but does so by splitting up Nueces County. As discussed above, see supra at 10, such a split ignores the request by Texas legislators and the public that Nueces County anchor a congressional seat.

8. Plans C209 and C212 (Congressman Francisco Canseco)

Plans C209 and C212 have been proposed by Congressman Canseco. Plan C209 appears to create the following 7 Latino opportunity districts: (1) District 15 with 71.0% HCVAP; (2) District 16 with 72.7% HCVAP; (3) District 20 with 61.9% HCVAP; (4) District 23 with 59.3% HCVAP; (5) District 27 with 73.7% HCVAP; (6) District 28 with 71.0% HCVAP; and (7) District 29 with 56.3% HCVAP. The State objects to Plan C209 because it creates one less Latino opportunity district than Plan C185, and the changes it makes merely reflect political choices. Plan C209 fails to create a Latino opportunity in Central Texas that reflects the significant population growth in this region of the State. Instead, Plan C209 seeks to create District 35, which is anchored in Travis County instead of Bexar County, and has

only 48.3% HCVAP. As configured in Plan C209, District 35 is less compact than any proposed district in Plan C185, including the State's proposed District 35. See Exhibit A, Giberson Declaration ¶ 5.

Furthermore, Plan C209 does not create a new minority opportunity district in DallasFort Worth, but only a coalition district (District 33) which has 39.5% HCVAP and 17.8% BVAP. Using the perimeter-to-area measure, the boundary of District 33 is more convoluted than any of the districts in Plan C185. See Exhibit A, Giberson Declaration ¶ 5. The State objects to District 33 because section 2 does not require the creation of coalition districts. Finally, in South Texas, Plan C209 creates District 27, but in order to create this Latino opportunity district, it divides Nueces County. As discussed above, the split in Nueces County is inconsistent with testimony from the public during the interim and requests by legislators that Nueces County serve as an anchor for a congressional district.

Plan C212 purports to create the following 7 Latino opportunity districts: (1) District 15 with 71.0% HCVAP; (2) District 16 with 72.7% HCVAP; (3) District 20 with 61.9% HCVAP; (4) District 23 with 59.3% HCVAP; (5) District 27 with 73.7% HCVAP; (6) District 28 with 72.0% HCVAP; and (7) District 29 with 56.3% HCVAP. The State objects to Plan C212 because it creates fewer Latino opportunity districts than Plan C185. District 33 is a coalition district in Dallas-Fort Worth that is not required by section 2 and suffers from high compactness scores. See Exhibit A, Giberson Declaration ¶ 5. Plan C212 creates new congressional District 35, which runs from Austin to

San Antonio, and is similar to District 35 in Plan C185. However, Plan C212's District 35 appears to be anchored in Travis County and is not a Latino opportunity district given that it has only 48.3% HCVAP. District 35 also has compactness scores that are higher than any of the districts in Plan C185. Exhibit A, Giberson Declaration ¶ 5. Accordingly, the State objects to Plan C212 on the ground that it does not remedy any alleged constitutional or statutory violation.

IV. Objections to Proposed Interim House Redistricting Plans

The State objects to Plaintiffs' proposed interim plans for the Texas House because all three make changes statewide that are not confined to areas in which they have alleged constitutional or statutory violations. Plaintiffs are not attempting to cure legal defects in the map as much as they are attempting to substitute their political preferences for those of the Legislature. For example, there was no testimony during the Section 2 trial related to Travis County, yet all three proposed interim plans make changes to Travis County's House districts. Since no legal defects have been identified in the Travis County House districts, Plaintiffs' remedial plans for the county merely replace the Legislature's political choices with their own.

Further, all three proposed interim plans violate the county-line rule in Article III, § 26 of the Texas Constitution in more counties than necessary to comply with the Equal Protection Clause's one-person one-vote mandate, confirming that race predominates over traditional redistricting

principles. Plan H295 is the most egregious example of illegally dividing counties into multiple House districts in order to create race-based districts. Finally, although Plaintiffs complain about the alleged high deviation in Plan H283, citing it as evidence of intent to disadvantage minority voters, the population variations in the proposed plans are not significantly better. Indeed, in order to achieve a lower deviation, Plan H295 had to violate the county-line rule 15 times. Similarly, Plan H296 has 5 county line violations and only manages to reduce the total deviation to 9.72%. Plan H292 contains 7 county line violations and has a larger deviation than Plan H283.

A. Plan H292 (Texas Latino Redistricting Task Force)

Defendants object to Plan H292 on the ground that it violates a traditional redistricting principle—the Texas Constitution's county-line rule—for the sole purpose of creating additional race-based districts. Plan H292 purports to create 34 Latino opportunity districts; however, only 32 districts exceed 50% HCVAP or SSVR. To create a second HCVAP majority district in Nueces County, Plan H292 removes 6% of the population (18,970 people, 14,147 of whom are Anglo) and adds them to HD 30. The unnecessary removal of Nueces County population into a district based outside the county violates the county-line rule and demonstrates that Plan H292's treatment of Nueces County is motivated predominantly by the goal of creating race-based districts. Plan H292 also creates District 32 by joining surplus population from Cameron County and Hidalgo County. District 32 violates the

county-line rule because it forces unnecessary divisions in other areas of the State and because it unnecessarily divides Cameron County among four districts by dividing its surplus population into District 32 and District 43. Districts 51 and 103, neither of which reaches 50% HCVAP or SSVR, are coalition districts at best and thus not required by section 2.

B. Plan H295 (MALC)

Plan H295 purports to create 33 districts with over 50% HCVAP as compared to 30 such districts in Plan H283. Plaintiffs also claim that Plan H295 is superior to the State's plan because it has a total deviation of 6.87%. The State objects to Plan H295 because the changes Plaintiffs propose in Plan H295 make modifications to portions of the State in which no statutory or constitutional violation has been alleged. Plaintiffs basically use Plan H295 as a wish list to make different political choices than those made by the Legislature.

Plaintiffs admit that Plan H295 "cut[s] 31 county lines" in violation of the Texas Constitution. Although Plaintiffs contend that Plan H283 has 16 county-line cuts, this is incorrect. Plan H283 divides only one county (Henderson) for a reason other than allocating surplus population. This violation of the county-line rule is justified in order to comply with the one person, one vote requirement of the Fourteenth Amendment. The "cuts" that Plaintiffs identify relate to the removal of part of a county to assign surplus population, which are not prohibited by Article III, § 26 of the Texas Constitution. Thus, Plan H283 clearly adheres to the county-line rule.

Significantly, even though Plaintiffs completely disregard the county-line rule, they fail to equalize population among all House districts. This demonstrates that Plaintiffs violate the Texas Constitution in their plan only to make political choices that would favor Democratic candidates. This is evident in Plan H295's decision to create three districts in Nueces County, even though the population of the county only entitles it to two seats, and its creation of a districtin Cameron and Hidalgo County despite the resulting county-line violations in other regions of the state. Finally, the State objects to Plan H295 because it does not respect the Legislature's goal of protecting incumbents and, as a result, is much less fair to incumbents—particularly Republican incumbents. All of Plan H295's pairings result in a Republican losing to a Democrat or two Republicans being paired. Plan H295 does not pair any Democrats.

C. Plan H296 (Perez Plaintiffs)

Plan H296 is similar to Plan H295. It purports to create 33 Latino opportunity districts with over 50% HCVAP as compared to 30 such districts in Plan H283. The State objects to Plan H296 because it has 5 county-line violations. Additionally, Plan H296 makes the same member pairings as in Plan H295, all of which clearly favor Democratic incumbents at the expense of Republicans. The State objects to this plan for the same reasons it objects to Plan H295.

V. Objections to Proposed Interim Senate Redistricting Plans

The United States has not objected to the State's Senate redistricting plan. In fact, the Answer filed in the judicial preclearance suit admits that the State is entitled to a declaratory judgment that the Senate plan complies with section 5 of the VRA. See Answer (Doc. 45) ¶¶ 21, 35, Civil Action No. 1:11-cv-01303 (D.D.C. Sept. 19, 2011) ("Defendants admit that Plaintiff is entitled to a declaratory judgment that the proposed Senate plan complies with Section 5 of the Voting Rights Act."). Pending a contrary decision from the district court, the State's enacted Senate redistricting plan is therefore properly implemented as an interim plan except to the extent it must be altered to cure constitutional or statutory defects. Plaintiffs have identified no such defects in the Senate plan.

A. Plan S156 (Davis Plaintiffs)

Plan S156 was submitted by the Davis Plaintiffs in Davis v. Perry, No. 5:11-cv-788-OLG-JES-XR (W.D. Tex). Plan S156 combines 12% of Dallas County's population with 29% of Tarrant County's population to create a proposed SD 10 with 32.6% HCVAP and 26.0% BCVAP. In addition, the plan makes changes to other state-enacted districts which are not the subject of litigation, specifically Senate Districts 2, 8, 9, 12, 16, 22, 23, and 30. Finally, the creation of SD 10 in S156 reduces BCVAP in Senate District 23, a district in which African Americans currently elect the candidate of their choice, from 48.3% in the benchmark plan to 45.2% in S156.

The State objects to Plan S156 on the ground that its proposed SD 10 is not necessary to cure a statutory or constitutional violation; therefore, it is not properly imposed in a court-drawn interim redistricting plan. While it is offered as an ostensible race-based remedy for a section 2 violation, SD 10 does not meet the Gingles I requirement that a minority citizen voting age population be sufficiently large and geographically compact to constitute the majority in a single district. It is neither a majority Latino district nor a majority African-American district. The State's decision not to create this Senate district does not violate section 2 of the VRA.

The State objects further to Plan S156 on the ground that it purports to alter districts that have not been challenged by Plaintiffs. Plaintiffs' attempt to create these districts through a court order invades the province of the Texas Legislature and asks the Court to exceed its authority because Plan S156 merely seeks to enact the Plaintiffs' policy preferences outside of the legislative process.

B. Plan S155 (LULAC Plaintiffs)

Plan S155 was submitted by the LULAC Plaintiffs in LULAC v. Perry, No. 5:11-cv-855-OLG-JES-XR (W.D. Tex) (Consolidated). Plan S155 is a partial plan that makes changes to two senate districts in Tarrant and Dallas County. Plan S155 combines 20% of Dallas County's population with 19% of Tarrant County's population to create SD 10. This configuration does not exist in either the benchmark plan or the State's enacted plan. The proposed SD 10 contains 38.0% HCVAP and 16.3% BCVAP. It increases the BCVAP in SD 23 from

48.3% in the benchmark plan to 49.9% in Plan S155, while reducing the HCVAP in SD 23 from 24.3% in the benchmark plan to 17.7% in Plan S155.

Defendants object to Plan S155 on the ground that it does not cure any alleged violation of federal law and is therefore improper in a court-ordered interim plan. Like the Davis Plaintiffs' Plan S156, LULAC's plan makes changes to districts in Tarrant and Dallas Counties in order to form a district that does not satisfy the first Gingles precondition and is therefore not compelled by the VRA. Because the proposed districts are not compelled by the VRA, they constitute discretionary political choices that only the Texas Legislature has the authority to make. The State objects further to Plan S157 on the ground that it is not a complete map; therefore, its impact on other districts is unknown.

C. Plan S157 (LULAC Plaintiffs)

Plan S157 is the second partial plan submitted by LULAC Plaintiffs in LULAC v. Perry, No. 5:11-cv-855-OLG-JES-XR (W.D. Tex) (Consolidated). Plan S157 creates three senate districts in Dallas, Tarrant, and Ellis County. Under Plan S157, SD 30 combines 33% of Dallas County's population with 17% of Ellis County's population, a configuration not found in either the benchmark plan or the State's enacted plan. The proposed SD30 would contain 14.7% HCVAP and 44.1% BCVAP. SD 33 contains 35.9% HCVAP and 21.1% BCVAP. Finally, SD 34 contains 21.1% HCVAP and 23.6% BCVAP.

The State objects to Plan S157 on the ground that it does not cure any alleged violation of federal law and is therefore improper in a court-ordered

interim plan. Like S155 and S156, none of the proposed districts in S157 are compelled by the Voting Rights Act and therefore constitute discretionary districts that only the Texas Legislature has the policy-making authority to create. Further, the State objects to Plan S157 on the ground that it is not a complete map; therefore, its impact on other districts is unknown.

CONCLUSION & PRAYER

For the foregoing reasons, Defendants respectfully request that the Court sustain its objections to the Plaintiffs' proposed interim reapportionment plans and order that the Texas Legislature's duly enacted redistricting plans for Congress and the Texas House of Representatives be employed, on an interim basis, for the 2012 elections.

Dated: October 24, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/10/11
Document 508

DEFENDANTS' ADVISORY TO THE COURT REGARDING DEVIATION FROM EQUALIZED DISTRICT POPULATION IN INTERIM REDISTRICITNG PLANS

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively "Defendants"), submit this advisory memorandum to clarify the standards that apply to interim reapportionment orders, specifically the degree to which a court-drawn interim plan may deviate from absolute population equality in state legislative districts when redistricting plans have been enacted by the legislature but not precleared.

INTRODUCTION

During the recent hearings on interim redistricting plans, the Court questioned whether interim Texas House and Senate plans could incorporate unequally populated districts from the enacted plans given the stricter standards of population equality that apply to court-drawn plans. Courts that have considered this question have demonstrated that the strict standard of map-wide population equality applies only when the court must create an entirely new redistricting plan due to the legislature's failure to act. When the legislature has enacted redistricting plans, the court's power extends only to remedying specific constitutional and statutory defects in thoseplans. In the context of state legislative redistricting plans, de minimis population deviations are not legal defects in the enacted plans and therefore should not be addressed in any interim redistricting plans.

LEGAL AUTHORITY

The Supreme Court has held that when the legislature's failure to reapportion forces a federal court to create a redistricting plan, the court's plan "must ordinarily achieve the goal of population equality with little more than de minimis variation." Chapman v. Meier, 420 U.S. 1, 27 (1975) (vacating a state legislative redistricting plan, drawn by a federal district court after the legislature failed to act, which had a total population deviation of 20.14%)[1]; see also Connor v. Finch, 431 U.S. 407, 415

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[1] It is important to note that the Supreme Court stopped short of mandating precise population equality for state legislative districts created by federal courts. See Chapman, 420 U.S. at

(1977) (noting that plans drawn to remedy the legislature's failure to redistrict are subject to stricter standards because courts "possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name"). When the legislature has enacted a redistricting plan, however, the court's lack of authority to override legitimate legislative decisions prevents it from modifying the legislature's plan unless necessary to remedy specific violations of federal law:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." . . . An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect.

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27 n.19 ("This is not to say, however, that court-ordered reapportionment of a state legislature must attain the mathematical preciseness required for congressional redistricting . . . ."). Chapman is therefore consistent with the ten percent threshold generally permitted in state legislative redistricting plans. See, e.g., *Brown v. Thomson*, 462 U.S. 835, 842 (1983) ("Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.").

Upham v. Seamon, 456 U.S. 37, 43 (1982) (per curiam) (quoting Connor v. Finch, 431 U.S. at 414); cf. White v. Weiser, 412 U.S. 783, 797 (1973) (holding that the district court erred because "in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan"). This limitation on the court's remedial authority applies even if the legislature's plan has not yet been precleared. See Upham 456 U.S. at 43 ("We have never said that the entry of an objection by the Attorney General to any part of a state plan grants a district court the authority to disregard aspects of the legislative plan not objected to by the Attorney General.").[2]

Although Upham recognized the "stricter standards" that apply to court-ordered redistricting plans, the Supreme Court explained that those strict standards apply only to parts of a plan that are actually drawn by a court to remedy specific legal violations:

> This stricter standard applies, however, only to remedies required by the nature and

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[2] In Upham, the DOJ made an administrative determination denying preclearance. In this case, there has been no preclearance determination, but the DOJ has identified specific districts that it argues do not satisfy section 5 of the VRA. To the extent this distinction makes any difference, it would seem to require greater deference to the State's plans in this case, which have not been denied preclearance, than to the plan in Upham, which had been denied. Put differently, it would be nonsensical to give greater deference to a map for which preclearance has been affirmatively denied than to a map for which preclearance is still pending.

> scope of the violation: "The remedial powers of an equity court must be adequate to the task, but they are not unlimited." . . . We have never said that the entry of an objection by the Attorney General to any part of a state plan grants a district court the authority to disregard aspects of the legislative plan not objected to by the Attorney General. There may be reasons for rejecting other parts of the State's proposal, but those reasons must be something other than the limits on the court's remedial actions. Those limits do not come into play until and unless a remedy is required; whether a remedy is required must be determined on the basis of the substantive legal standards applicable to the State's submission.

Upham, 456 U.S. at 42–43 (quoting Whitcomb v. Chavis, 403 U.S. 124, 161 (1971)) (internal citation and footnote omitted). The fact that a court must modify part of a legislatively enacted map does not mean that the entire map is subject to the stricter standards that apply to courtdrawn districts. In other words, while this Court may attempt to minimize population deviations in any district it chooses to modify, it has no legal authority to override the Legislature's legitimate policy decisions in order to achieve absolute population equality in every legislative district across the State—including districts that comply with federal law.

The three-judge court in Balderas v. Texas, 2001 WL 34104833 (E.D. Tex. Nov. 28, 2001), applied these principles to the Texas House redistricting

plan passed by the Legislative Redistricting Board (LRB) in 2001. In Balderas, the Department of Justice objected to the LRB's House plan shortly after the district court concluded an evidentiary hearing on claims under the Constitution and section 2 of the Voting Rights Act. Because the LRB-drawn plan had not been precleared, the district court had to implement its own plan, but the court expressly limited its modifications to districts in the enacted plan that violated federal law:

> Our decision here is limited to correcting the federal constitutional and statutory defects in the LRB House plan, including the concerns raised in the objection of the Justice Department. That approach is dictated by the Supreme Court's decision in Upham v. Seamon.

Balderas, 2001 WL 34104833 at *2 (footnotes omitted). Following the rule expressed in Upham, the Balderas court incorporated the majority of the LRB's House plan and made changes only where necessary to address the DOJ's objections. In other words, the court based its plan on the unprecleared LRB plan—not the benchmark plan based on the 1990 Census. Significantly, contemporary reports from the Texas Legislative Council show that the Balderas court's plan included deviations from ideal district population, even in large urban counties with multiple whole districts. See Texas Legislative Council, Plan 1369H Red-M100 Report (Nov. 26,

2001), attached as Exhibit 1.[3] The Texas House plan implemented by the three-judge court in Balderas v. Texas is the appropriate guide for this Court's interim House and Senate plans.[4]

The district court in Terrazas v. Clements, 537 F. Supp. 514 (N.D. Tex.), stay denied, 456 U.S. 902 (1982), took a similar approach. The court adopted unprecleared LRB plans on an interim basis, modifying the State's plans only as necessary to address the DOJ's objections. Significantly, in that case the district court expressly rejected the argument, based on Chapman, that it was required

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[3] The Texas Legislative Council report shows that Plan 1369H had a total deviation of 9.74% and an average deviation of 2.65%.

[4] This case, like Upham, Balderas, and *Johnson v. Miller*, infra, is unlike cases in which district courts implemented legislative plans that had not been submitted for preclearance review. See *Lopez v. Monterey County*, 519 U.S. 9 (1996) (holding, in a section 5 enforcement case, that the district court erred by implementing the same redistricting plan that the county had failed to submit for preclearance); *Clark v. Roemer*, 500 U.S. 646 (1991) (holding that the district court erred in authorizing elections under a plan that the state had failed to submit for preclearance); *McDaniel v. Sanchez*, 452 U.S. 130 (1981) (holding that the district court erred in adopting a permanent remedial plan submitted to the court by a covered jurisdiction after its previous plan was held to be unconstitutional, explaining that the court should not have acted on the plan before it had been submitted for preclearance). Those cases presented a risk that covered jurisdictions could circumvent preclearance by refusing to enact a redistricting plan, then submitting a plan to a court for implementation as a remedy for the legislature's failure to redistrict. That risk is not present in this case, where all of the plans at issue have been submitted for preclearance.

to eliminate population deviations in the LRB's plan. *See id.* at 546–47; cf. Burton v. Hobbie, 543 F. Supp. 235, 239 (M.D. Ala.), aff'd, 459 U.S. 961 (1982) (implementing an unprecleared state legislative plan on an interim basis, with limited modifications in response to DOJ objections, relying on White v. Weiser, Upham v. Seamon, and Terrazas v. Clements).

Similarly, the district court in *Johnson v. Miller*, 929 F. Supp. 1529, 1562 (S.D. Ga. 1996), incorporated unprecleared, legislatively enacted Georgia House and Senate districts into an interim plan despite their deviation from strict population equality. The Georgia Legislature had enacted mid-decade redistricting plans in 1995 because it anticipated, correctly, that its 1992 plans were unconstitutional under *Shaw v. Reno*, 509 U.S. 630 (1993). After the 1992 plans were challenged, the district court entered a preliminary injunction against their use in further elections. Because the DOJ objected to Georgia's 1995 plans, however, the district court had to adopt interim plans. The parties agreed that the majority of the 1995 plans should be used on an interim basis, but three Senate districts and seven House districts remained in dispute. Despite the lack of preclearance, the district court adopted the 1995 plans on an interim basis and modified only three districts in response to DOJ objections. *See id.* at 1566–67.

Significantly, the three-judge court in Johnson held that a total population deviation of approximately ten percent did not preclude the 1995 plans from being used as court-ordered interim plans. The district court recognized that court-

ordered plans generally must maintain equal population among districts, but it explained that Upham required it to adhere to the Legislature's judgment:

> We realize that absent "persuasive justification," a court-ordered reapportionment plan to remedy a violation of the one-person one-vote principle must ordinarily achieve the goal of population equality with little more than de minimis deviation. *Connor v. Finch*, 431 U.S. at 414 . . . . However, our plan is not one drawn to remedy a one-person one-vote violation, and our "persuasive justification" is that we are constrained by the holding in *Upham v. Seamon* . . . to use so much of the State legislative plan as is not violative of the Constitution or federal statutes. Complying with the Upham rule requires that we accept and work within the range of deviations from ideal population that are contained in the State plan from which we borrow district configurations.

Id. at 1563 n.84. The court held that "[i]t does not violate the one-person one-vote principle for us to use in an interim remedy plan districts from a legislatively enacted plan that does not itself violate that principle." Id. at 1563. Defendants are not aware of any authority to the contrary.

CONCLUSION

For the reasons stated above, Defendants respectfully submit that, in the event this Court orders interim district maps that deviate from the

legislatively enacted Texas House and Senate plans, the Court should not eliminate population deviations that would otherwise be permissible in a legislatively enacted plan, and should make only such changes to the legislatively enacted plans as it deems necessary to remedy specific violations of federal law.

Dated: November 10, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/18/11
Document 521

DEFENDANTS' OBJECTIONS TO THE COURT'S PROPOSED INTERIM HOUSE PLANS

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, "Defendants") respectfully file these objections in response to the Court's Order of November 17, 2011 (Doc. 517). In support, Defendants state as follows:

A court's job is to apply the law, not to make policy. A federal court lacks constitutional authority to interfere with the expressed will of the State Legislature unless it is compelled to remedy a specific, identifiable violation of law. Contrary to this basic principle of federalism, the proposed interim

redistricting plan consistently overturns the Legislature's will where no probability of a legal wrong has been identified. Worse, the court-proposed plan even alters legislatively enacted districts that were not subject to any legal challenge by the plaintiffs or disputed in the section 5 case. By imposing remedies where no wrongs exist, and where no wrongs were even alleged, the Court has exceeded its mandate and actively engaged in policymaking. But the Court is not competent to engage in lawmaking, and its unauthorized foray into territory constitutionally reserved for the Legislature has resulted in a proposed map that ignores countless policy choices hammered out through the legislative process over the course of the 2011 session. Indeed, even in the very short time allowed for comments, a bipartisan group of at least twenty legislators have objected to the unilateral policy decisions imposed by the Court's maps.[1]

While the Court has not identified any particular Voting Rights Act (VRA) or constitutional violation that would provide a compelling or narrowly tailored explanation for the proposed revisions, it is apparent from the revisions that the Court has:

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[1] Upon receipt of the Court's Order, a message soliciting comments from all members of the Legislature was sent to the membership on behalf of the Office of the Attorney General by the Office of the Speaker of the House. The Office of the Attorney General received numerous comments, including certain messages from legislators who are plaintiffs in this case. Their comments are attached unedited. With respect to legislators who are plaintiffs in this case, no further communications were conducted with them.

• Created coalition districts across the State when such districts have never been construed by the U.S. Supreme Court as required under either section 2 or section 5 of the VRA;

• Split Nueces County into 3 House districts, 2 of them partial, in clear violation of the Texas Constitution, without any overriding requirement to do so under the Constitution or laws of the United States;

• Reduced the deviation in district population in the Texas House in derogation of the discretion accorded to the State under governing law;

• Reduced the number of African-American voting age majority districts in the House from three to one; and

• Failed to honor historical lines, existing political boundaries, and communities of interest.

A. The Court's Remedial Power Does Not Authorize It to Displace Lawful Policy Choices by the Legislature.

Because unelected federal judges possess neither the constitutional power nor the political competence to make the policy choices essential to redistricting, the Supreme Court has prohibited lower courts from disregarding the legislature's intention as expressed in an enacted redistricting plan, unless it is necessary to avoid a constitutional or statutory violation:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the

> requirements of the Constitution with the goals of state political policy." . . . An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham v. Seamon, 456 U.S. 37, 43 (1982) (per curiam) (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)); cf. *White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the district court erred because "in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan"). In other words, when a federal court is forced to order an interim redistricting plan, it must respect the State Legislature's considered judgments whenever possible.

B. The Proposed Plans Disregard the Legislature's Policy Choices Without Justification.

The redistricting plans proposed by the Court, H298 and H299, systematically disregard the policy choices of the Texas Legislature. Those choices reflect more than the preferences of individual legislators. The legislatively enacted plans incorporate constituents' concerns about

communities of interest and proper representation that were received during the extensive redistricting hearings held in the legislative interim. Thus the Court's departure from the expressed will of the Legislature not only undermines the democratic process, it ignores the voice of the citizenry.

To take a glaring example, plan H298 disregards the interests of the African-American community by reducing the number of majority-African-American districts from three to one and ignoring traditional African-American communities of interest, potentially jeopardizing their representation in the future. As Representative Senfronia Thompson (D-Houston) explains, the Court's decision to substitute its political judgment for that of the Texas Legislature destroys African-American coalitions that have taken years to build, removes core constituencies from districts, and separates voters that have shared representation for years. Statement of Representative Senfronia Thompson, Attachment at 7. The whole point of Upham's direction to follow the enacted policy of a state as expressed in a legislatively enacted map is to prevent courts from doing exactly what this Court has done in its proposed interim plan. As explained by Representative Harold Dutton (D-Houston): "The residents in District 142 are treated far better under the Legislature's approved map than they are under the Court drawn map. The traditional communities of interest, which have existed since 1972, are destroyed under the Court['s] plan." Statement of Representative Harold Dutton, Attachment at 15.

The Court's pervasive departure from the legislatively enacted House plan harms communities

of interest across the State. The Court's proposed changes to HD 15, for example, cross natural borders, divide The Woodlands (splitting school districts and neighborhoods in the process), and create a House district that one cannot drive across without crossing into another district. See Statement of Representative Rob Eissler, Attachment at 1. Similarly, the Court's proposed changes to Collin County divides the city of Frisco, whose residents asked to be contained in a single district. But the changes do not serve any apparent remedial purpose, as they do not affect the demographics of any affected district. See Statement of Representative Jerry Madden, Attachment at 13. Whatever purpose may be served by splitting these communities, it is not enforcement of the Constitution or the VRA. Comments received from the Legislature show that the Court's comprehensive revision of district lines has disrupted communities of interest all over the State. See Attachment.

The Court's plans also pair Republican and Democratic incumbents, including Representatives Rodney Anderson and Helen Giddings, thus overriding the Legislature's deliberate decision to avoid cross-party pairings in order to give paired incumbents a reasonable chance to be re-elected. The Court's plans also pair different incumbents than the Legislature's enacted plan, reversing without justification the difficult policy determinations made by the Legislature. The Court is simply not legally authorized—nor is it competent—to make these kinds of purely political decisions.

C. The Proposed Plans Change Lawful Population Deviations for No Apparent Purpose and With No Apparent Benefit.

The proposed redistricting plans further undermine the Legislature's policy choices by altering every House district in large urban counties for no apparent reason other than to reduce the difference in total population among districts. These changes are not within the Court's power because the legislatively enacted population deviations do not violate federal law. The Supreme Court has made clear that a total deviation of less than 10% is consistent with the principle of one-person, one-vote, *Brown v. Thomson*, 462 U.S. 835, 842 (1983), and it has expressly based that determination on the fact that policy choices are necessary not only to enact a plan but to ensure effective representation. See *Gaffney v. Cummings*, 412 U.S. 735 (1973). Changing legislatively enacted districts for which there is no section 2, section 5, or constitutional violation alleged—much less a demonstrated likelihood that such a challenge would succeed on the merits—is beyond the Court's power. In addition, such unwarranted changes mark a clear departure from the consistent practice of previous courts in Texas redistricting cases.[2] Although courts are

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[2] See Balderas v. Texas, 2001 WL 34104833 (E.D. Tex. Nov. 28, 2001) (incorporating the majority of the unprecleared LRB House plan into a court-drawn redistricting plan, including deviations in large urban counties with multiple whole districts); Terrazas v. Clements, 537 F. Supp. 514, 546–47 (N.D. Tex. 1982) (rejecting the argument that the court was required to eliminate population deviations when incorporating districts from an unprecleared LRB redistricting plan); accord

generally subject to a stricter standard of population deviation than state legislatures in drawing electoral districts,

> [t]his stricter standard applies . . . only to remedies required by the nature and scope of the violation . . . . There may be reasons for rejecting other parts of the State's proposal, but those reasons must be something other than the limits on the court's remedial actions. Those limits do not come into play until and unless a remedy is required; whether a remedy is required must be determined on the basis of the substantive legal standards applicable to the State's submission.

Upham, 456 U.S. at 42–43 (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971)) (internal citation and footnote omitted); see also *Connor v. Finch*, 431 U.S. 407, 415 (1977) (noting that plans drawn to remedy the legislature's failure to redistrict are subject to stricter standards because courts "possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name").

Johnson v. Miller, 929 F. Supp. 1529, 1563 (S.D. Ga. 1996) ("It doesnot violate the one-person one-vote principle for us to use in an interim remedy plan districts from a legislatively enacted plan that does not itself violate that principle."); cf. Burton v. Hobbie, 543 F. Supp. 235, 239 (M.D. Ala.) (implementing an unprecleared state legislative plan on an interim basis, with limited modifications in response to DOJ objections, relying on White v. Weiser, Upham v. Seamon, and Terrazas v. Clements), aff'd, 459 U.S. 961 (1982).

The Court's apparent attempt to minimize—but not equalize—population across districts creates the very entanglement that the Supreme Court has warned against since the beginning of its involvement in reapportionment. The Court long ago cautioned that reducing constitutional population deviations in state legislative plans results in excessive interference with the legislative process with minimal constitutional returns:

> Involvements like this must end at some point, but that point constantly recedes if those who litigate need only produce a plan that is marginally 'better' when measured against a rigid and unyielding population-equality standard.
>
> The point is, that such involvements should never begin. We have repeatedly recognized that state reapportionment is the task of local legislatures or of those organs of state government selected to perform it. Their work should not be invalidated under the Equal Protection Clause when only minor population variations among districts are proved.

Gaffney v. Cummings, 412 U.S. 735, 750–51 (1973).

D. The Proposed Plans Create and Maintain Coalition Districts that Are Not Compelled by the Voting Rights Act.

Plan H298 further overturns the Legislature's judgment by creating two House districts—District 26 and District 54—in which three distinct minority groups are combined in what appears to be a

deliberate effort to meet a 50% minority population benchmark. See Plan H298, Red 106 (District 26 contains 14.5% Hispanic CVAP, 15.6% Black CVAP, and 23.8% Asian CVAP); id. (District 54 contains 17.8% Hispanic CVAP, 28.8% Black CVAP, and 3.1% Asian CVAP). Section 2 of the Voting Rights Act does not require the State—or permit the Court—to create multi-racial coalition districts when no single, geographically compact minority group is large enough to make up the majority in a district. See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1243 (2009) ("Nothing in § 2 grants special protection to a minority group's right to form political coalitions."). Even if section 2 could be construed to require coalition districts in some instances, the Supreme Court has emphasized that such districts could be compelled only upon a heightened showing of voting cohesion between members of each group. See *Growe v. Emison*, 507 U.S. 25, 41, 42 (1993); cf. *Session v. Perry*, 298 F. Supp. 2d 451,483–84 (E.D. Tex. 2004) ("Properly confined, the [VRA] implements the fundamentals of factions. Unconfined it reaches into the political market and supports persons joined, not by race, but by common view. Serious constitutional questions loom at that juncture."), aff'd in part, rev'd in part on other grounds, vacated in part sub. nom. *LULAC v. Perry*, 548 U.S. 399 (2006). No evidence before this Court demonstrates any voting cohesion—let alone heightened voting cohesion—among Latino, African-American, and Asian minority groups in District 26 and District 54. Nor is there any evidence in the record that members of these minority groups have been effectively excluded from the political process. The same is true of HD

149, which has been redrawn in Harris County for no apparent reason other than to protect an alleged political coalition. Just as section 2 does not require the Court to create coalition districts, it does not permit the Court to maintain a coalition district against the Legislature's will unless the elimination of such a district is shownto be a manifestation of intentional racial discrimination. No such showing has been made in this case. As a result, this Court's proposal to create and maintain such coalition districts is not justified by the need to remedy a legal harm.

E. The Proposed Plans Violate the Texas Constitution for a Solely Race-Based Purpose.

Furthermore, the proposed House Plan (H298) violates the Texas Constitution's county line rule, see TEX. CONST. art. III, § 26, because it contains an unnecessary county cut, while the State's enacted plan contains none. This county-line rule violation evidences the Court's decision to elevate race over traditional redistricting principles in violation of the United States Constitution. The Supreme Court, however, has repeatedly found that the Constitution and Voting Rights Act incorporate, and therefore cannot conflict with, traditional redistricting principles like the county-line rule. See, e.g., *Bush v. Vera,* 517 U. S. 952, 963 (1996). The Voting Rights Act does not require, and the Constitution does not allow, the Court to reject traditional redistricting principles solely to create majority Hispanic or African-American districts. See, e.g., *Abrams v. Johnson*, 521 U.S. 74, 92 (1997).

CONCLUSION

The ultra vires decisions embodied in the Court's proposed interim plan eviscerate countless legitimate, considered judgments of the Texas Legislature. Indeed, the Court's proposal denies the Legislature the presumption of good faith and legality to which it is entitled. Moreover, it does so without any explanation, much less a compelling and narrowly tailored justification for the race-based "remedy" it imposes. The Court's proposal appears to reflect the policy choices of unelected federal judges, rejecting without explanation or justification the will of the people of the State of Texas as reflected in the plans enacted by their duly elected representatives.

Dated: November 18, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/23/11
Document 529

DEFENDANTS' MOTION TO STAY IMPLEMENTATION OF INTERIM HOUSE REDISTRICTING PLAN PENDING APPEAL

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, the "State Defendants") respectfully ask the Court to stay pending appeal its interlocutory order dated November 23, 2011, which directs implementation of an interim redistricting plan for the Texas House of Representatives. State Defendants also request further relief described below.

ARGUMENT AND AUTHORITIES

As Judge Smith recognized, "[u]nless the Supreme Court enters the fray at once to force a stay

or a revision [to the Court's House map], this litigation is, for all practical purposes, at an end." This Court should itself grant the stay envisioned by Judge Smith, which would give the Supreme Court time to review this Court's actions before the election process moves forward under a legally flawed Texas House map. As Judge Smith recognized, if a stay is not granted, the democratically enacted will of the People of Texas will effectively be cast aside and replaced by the will of two unelected federal judges.

A stay pending appeal is entirely appropriate pending expeditious appellate review of important issues such as those presented by this Court's interim order. Indeed, the Supreme Court has itself routinely granted stays of interim redistricting plans pending its consideration of orders similar to this Court's interim order. *McDaniel v. Sanchez*, 448 U.S. 1318 (1980) (Powell, J., in chambers); *Bullock v. Weiser*, 404 U.S. 1065 (1972) (stay order), rev'd on substantive grounds sub nom. *White v. Weiser*, 412U.S. 783, 789 (1973); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970) (stay order), rev'd on substantive grounds and remanded, 403 U.S. 124 (1971).

This Court's interim order is akin to a preliminary injunction, and a preliminary injunction of any sort is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 676 (2008). A court will stay its injunction pending appeal where, as here, the moving party can demonstrate: (1) that it is likely to succeed on the merits; (2) that it would suffer irreparable injury if the stay were not granted; (3) that granting the stay would not substantially harm the other parties; and (4) that granting the stay would serve the public interest.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987). In this Circuit, it is well established that a stay pending appeal is warranted by a showing of "a substantial case on the merits when a serious legal question is involved" and by a showing that "the balance of the equities weighs heavily in favor of granting the stay." *Ruiz v. Estelle*, 650 F.2d 555, 556 (5th Cir. 1981). Id. See also *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) ("The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay.").

First, this Court's interim order violates *Upham v. Seamon*, and will likely be reversed on appeal. Upham clearly requires a district court enacting an interim redistricting plan to defer to a legislatively enacted map unless the court is required to remedy a probable constitutional or statutory violation. This Court's interimredistricting plan, however, substantially alters districtsenacted by the Texas Legislature where no constitutional or statutory violation exists. The Court apparently takes its mandate to impose these sweeping changes from the fact that section 5 proceedings remain pending. That approach converts the already constitutionally fragile section 5 mechanism into a mandate for wholesale rejection of the state's plan and forced implementation of a court-drawn plan. Indeed, in many cases, the interim plan changes districts that are not even alleged—either in these consolidated cases or in the judicial preclearance case currently pending in the United States District Court for the District of Columbia—to violate either constitutional or federal law.

Second, implementation of the interim redistricting plan drawn by this Court will cause substantial and irreparable harm to the State of Texas and its citizens. Specifically, even the temporary invalidation of a statute irreparably injures the State; by itself, it constitutes sufficient grounds for stay. See *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a Court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."); *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people . . . is enjoined."). But more troubling is the injury that will result from allowing the 2012 Texas House elections to go forward on an unlawfully composed redistricting plan. Once done, the harm caused to the State and its citizens by those elections cannot be undone even if the elections are later invalidated, because the results of the election would be irreversible. See *Lucas v. Townsend*, 486 U.S. 1301, 1304 (Kennedy, J., in chambers).

Third, the injuries caused to the State and its citizens strongly outweigh any harm caused to the plaintiffs in this case. Plaintiffs suffer little—if any harm—by a stay of the Court's interim redistricting plan pending appeal. In contrast, the harm caused to the state and all its citizens when an election takes place under an illegally drawn redistricting plan is both substantial and irreparable.

Finally, the public interest is clearly best served by a stay of this Court's interim redistricting plan.

I. STATE DEFENDANTS WILL LIKELY PREVAIL ON THE MERITS IN THE UNITED STATES SUPREME COURT.

As correctly explained in the dissent by Judge Smith:

> "The judges in the majority, with the purest of intentions, have instead produced a runaway plan that imposes an extreme redistricting scheme for the Texas House of Representatives, untethered to the applicable case law. The practical effect is to award judgment on the pleadings in favor of one side --a slam-dunk victory for the plaintiffs--at the expense of the redistricting plan enacted by the Legislature, before key decisions have been made on binding questions of law. Because this is grave error at the preliminary, interim stage of the redistricting process, I respectfully dissent."

Because the Court's interim redistricting plan for the House supplants the State's legislatively enacted plan without legal justification and thus "presents grave error," the Court should stay its order pending review by the United States Supreme Court. As explained below, the Court's plan is contrary to Supreme Court precedent governing the constitutionally permissible role of race in redistricting and the equitable jurisdiction afforded to courts faced with the need to draw interim plans. *Upham v. Seamon*, 456 U.S. 37 (1982). The Supreme Court is thus likely to conclude that this Court went beyond its authority in altering districts beyond

those necessary to remedy statutory or constitutional defects.

A. The Interim Redistricting Plan Alters Districts Beyond Those Necessary to Remedy Constitutional or Voting Rights Act Violations.

The Supreme Court has unambiguously prohibited lower courts issuing interim redistricting maps from deviating from the legislature's intention in an enacted redistricting plan, except where doing so is necessary to avoid a constitutional or statutory violation:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." . . . An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either thConstitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham v. Seamon, 456 U.S. 37, 43 (1982) (per curiam) (emphasis added) (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)); cf. *White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the district court

erred because "in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan"). In Upham, preclearance had been denied. Here, no preclearance decisions have been reached due to the Section 5 court's understandable confusion about the applicable legal standards and the Department of Justice's dilatory litigation tactics.[1] As a result, no court has concluded that the State's House map violates Section 5, Section 2, or the U.S. Constitution. Yet this Court shows less deference to the State's House map than was showed in Upham to a map that had been **denied** preclearance. It defies all logic to conclude that a map that has been adjudged to violate Section 5 should be shown more deference than a map for which preclearance is currently being sought and may ultimately be granted. Upham plainly controls this case, and under Upham, when a federal court is forced to order an interim redistricting plan, it must respect the state legislature's policy judgments wherever possible.

Furthermore, the Texas House interim redistricting plan undermines the Legislature's policy choices by altering every House district in large urban counties for no apparent reason other than to reduce the difference in total population among districts These changes are not within the Court's power because the legislatively enacted

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[1] For example, the Department of Justice moved earlier this week to abate the Section 5 proceeding in the D.C. District Court. The State, by contrast, requested a mid-December trial following the D.C. court's denial of the State's motion for summary judgment.

population deviations do not violate federal law. The Supreme Court has made clear that a total deviation of less than 10% is consistent with the principle of one-person, one-vote. See *Brown v. Thomson*, 462 U.S. 835, 842 (1983). Further, the House Plan includes changes to many districts that have never been alleged to violate the Voting Rights Act. This conflicts with the Supreme Court's holding that an interim plan must "reconcil[e] the requirements of the Constitution with the goals of state political policy." Upham, 456 U.S. at 43 (quoting Connor, 431 U.S. at 414). Changing legislatively enacted districts for which there is no section 2, section 5, or constitutional violation alleged—much less a demonstrated likelihood that such a challenge would succeed on the merits—is contrary to clearly established precedent.

B. The Interim Redistricting Plan Creates and Maintains Coalition Districts That Are Not Compelled By the Voting Rights Act.

The interim redistricting plan for the Texas House undermines the Legislature's judgment by creating House districts in which minority groups must be combined in order to meet the 50% citizen voting age population benchmark. See, e.g., Plan H298, Red 106 (House District 26 contains 14.5% Hispanic CVAP, 15.6% Black CVAP, and 23.8% Asian CVAP); id. (House District 54 contains 17.8% Hispanic CVAP, 28.8% Black CVAP, and 3.1% Asian CVAP). Section 2 of the Voting Rights Act does not require the State—or permit the Court—to create multi-racial coalition districts when no single, geographically compact minority group is large

enough to make up the majority in a district. *See Bartlett v. Strickland*, 129 S. Ct. 1231, 1243 (2009) ("Nothing in § 2 grants special protection to a minority group's right to form political coalitions."). Even if section 2 could be construed to require coalition districts in some instances, the Supreme Court has emphasized that such districts could be compelled only upon a heightened showing of voting cohesion between members of each group. *See Growe v. Emison*, 507 U.S. 25, 41, 42 (1993). No evidence before this Court demonstrates any voting cohesion—let alone heightened voting cohesion—among Latino, African-American, and Asian minority groups in House District 26 and House District 54.

The same is true of House District 149, which has been redrawn for no obvious reason other than to protect alleged political coalitions. Just as section 2 does not require the Court to create coalition or crossover districts, it does not permit the Court to maintain a coalition district against the Legislature's will unless the elimination of such a district is shown to be a manifestation of intentional racial discrimination. See Bartlett, 129 S.Ct. at 1246. No such showing has been made in this case.

C. The Interim House Plan Violates the Texas Constitution for a Solely Race-Based Purpose.

The interim House plan violates the Texas Constitution's county line rule, see TEX.CONST. art. III, § 26, because it contains an unnecessary county cut in Nueces County. The State's enacted plan, by contrast, contained no such unnecessary cut and

complied with the State Constitution. The Court's county-line rule violation evidences the Court's decision to elevate race over traditional redistricting principles in violation of the United States Constitution. The Supreme Court, however, has repeatedly found that the Constitution and Voting Rights Act incorporate, and therefore cannot conflict with, traditional redistricting principles like the county-line rule. *See, e.g., Bush v. Vera*, 517 U. S. 952, 963 (1996). The Voting Rights Act does not require, and the Constitution does not allow, the Court to reject traditional redistricting principles solely to create majority Latino or African-American districts. *See, e.g., Abrams v. Johnson*, 521 U.S. 74, 92 (1997). Accordingly, the Supreme Court is therefore likely to conclude that the interim redistricting plan is unlawful.

II. STATE DEFENDANTS WILL SUFFER IRREPARABLE INJURY ABSENT A STAY.

The immediate implementation of the Court's interim Texas House plan would prevent the State from enforcing a law enacted by the Texas Legislature. House Bill 150 passed with overwhelming majorities in both Houses of the Legislature. Blocking this legislation, as the Court has done, unquestionably causes irreparable harm to the State, its officers, and most importantly its citizens. As the Supreme Court has stated, even the temporary invalidation of a state statute irreparably injures the government and itself constitutes sufficient grounds to enter a stay. *See New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a Court from effectuating

statutes enacted by representatives of its people, it suffers a form of irreparable injury."); *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people . . . is enjoined.").

Beyond the harm inherent in blocking implementation of state law, a special harm arises when an election is permitted to go forward based on an illegal, court-drawn redistricting plan. As Judge Smith recognized, if a stay is not granted to allow for appellate review, this case will essentially be over, and the State's elections will be conducted on a legally flawed map. The candidate filing period will begin under the court's legally flawed, unreviewed map on Monday, STATE November 28, and absent a stay from this Court or the Supreme Court there will soon be little alternative other than to continue with elections on an improper map. The irreparable harm such a result would inflict on our democratic process and on all Texas voters requires no explanation. For these reasons, the Supreme Court has frequently stayed unlawful court-drawn plans in similar instances. *McDaniel v. Sanchez*, 448 U.S. 1318 (1980) (Powell, J., in chambers); *Bullock v. Weiser*, 404 U.S. 1065 (1972) (stay pending appeal in *White v. Weiser*, 412 U.S. 783, 789 (1973)); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970) (stay order).

III. STATE DEFENDANTS' IRREPARABLE INJURIES STRONGLY OUTWEIGH ANY HARM

TO PLAINTIFFS.

Plaintiffs will suffer little, if any, harm should the Court stay its order implementing the interim redistricting plan pending appeal. Any party that benefits from an improper interim redistricting map suffers no cognizable injury from a stay pending appellate review. In any case, Plaintiffs' right to vote and to participate equally in the political process will not be abridged by a mere delay in the final determination of electoral districts for the 2012 election. By contrast, refusing to issue a stay of an improper interim map will cause irreparable harm to the people of Texas. The election of an entirely new legislature under a plan other than the one enacted by the duly elected representatives of this State would be irreversible. See *Lucas v. Townsend*, 486 U.S. 1301, 1304 (Kennedy, J., in chambers) ("Even if the election is subsequently invalidated, the effect on both the applicants and respondents likely would be most disruptive.").

IV. A STAY PENDING APPEAL IS—BY DEFINITION—IN THE PUBLIC INTEREST.

A stay of the preliminary injunction would allow State Defendants to carry out the statutory policy of the Legislature, which "is in itself a declaration of the public interest which should be persuasive." *Virginian Ry. Co. v. Sys. Fed'n* No. 40, 300 U.S. 515, 552 (1937); *Illinois Bell Telephone Co. v. WorldCom Technologies, Inc.*, 157 F.3d 500, 503 (7th Cir. 1998) ("When Sthe opposing party is the representative of the political branches of a government the court must consider that all judicial interference with a public program has the cost of diminishing the scope of democratic governance.").

CONCLUSION & PRAYER

State Defendants respectfully request that the Court stay its order imposing an interim redistricting plan for the Texas House of Representatives pending appeal. The State further requests that this Court stay the candidate filing and qualification deadlines for the Texas House of Representatives (as prescribed by State law and modified by order of this Court).

Further, the State recognizes that in order to preserve the Supreme Court's jurisdiction and provide the Supreme Court with adequate time to correct this Court's errors, it may become necessary to delay the primary elections for the Texas House of Representatives. While all unaffected primary elections will continue as scheduled on March 6, 2012, the State is prepared to delay its Texas House of Representatives primary elections in order to ensure that it is not forced to conduct elections using a legally flawed map. By delaying the primary elections pending appeal—if that should become necessary—the State can ensure that its citizens will have the opportunity to vote in elections under a redistricting plan determined to be lawful by the U.S. Supreme Court.

To that end, the State requests any and all relief the Court deems necessary to effectuate the Supreme Court's appellate jurisdiction, including but not limited to a stay of the primary election dates for the Texas House of Representatives.

Dated: November 23, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/25/11
Document 534

DEFENDANTS' OBJECTIONS TO THE COURT'S PROPOSED INTERIM CONGRESSIONAL PLANS

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, "Defendants") respectfully file these objections in response to the Court's Order of November 23, 2011 (Doc. 526). In support, Defendants state as follows:

A court's job is to apply the law, not to make policy. A federal court lacks constitutional authority to interfere with the expressed will of the State Legislature unless it is compelled to remedy a specific, identifiable violation of law. *Upham v. Seamon*, 456 U.S. 37, 43-44 (1982) (per curiam).

Contrary to this basic principle of federalism, the proposed interim redistricting plan for Texas' United States House of Representatives districts consistently disregards the Legislature's will where no probability of a legal wrong has been identified or demonstrated. This Court is without power to supplant the Texas Legislature's policy choices even if it considers itself to be a better judge of the public interest than the Legislature.

In crafting the proposed interim congressional redistricting plan (Plan C220), the Court clearly arrogates to itself the power to set State policy. Although the Department of Justice (DOJ) identifies only two objectionable districts in the State's enacted plan (Plan C185), the Court's plan redraws all 36 congressional districts. See Identification of Issues, Civil Action No. 1:11-cv-01303, at 8-10 (Doc. 53) (identifying Districts 23 and 27). By so doing, the Court "broadly brush[es] aside state apportionment policy without solid constitutional or equitable grounds for doing so." *Whitcomb v. Chavis*, 403 U. S. 124, 160-161 (1971).

While the Court has not identified any particular Voting Rights Act (VRA) or constitutional violation that would provide a compelling or narrowly tailored explanation for the proposed revisions, it is apparent from the revisions that the Court has:

• Created a coalition district in Tarrant County when such districts have never been construed by the Supreme Court as required under either section 2 or section 5 of the VRA;

- Preserved a crossover district in Central Texas although the Supreme Court has expressly rejected the proposition that section 2 of the VRA requires the creation or preservation of such districts absent a finding of intentional discrimination;

- Reconfigured District 35 from Plan C185 so that the performance of the Latino candidate of choice in reconstituted election analysis decreases significantly;

- Reconfigured District 27 so that Nueces County is no longer the anchor of its own congressional district, thereby rejecting an express policy choice of the Texas Legislature;

- Reduced the number of African-American plurality voting age population districts in Congress from three to two;[1]

- Created population deviations between districts where the State plan contained none; and

- Failed to honor historical lines, existing political boundaries, and communities of interest.

A. The Court's Remedial Power Does Not Authorize It to Displace Lawful Policy Choices by the Legislature.

Because unelected federal judges possess neither the constitutional power nor the political competence to make the policy choices essential to redistricting, the Supreme Court has prohibited lower courts from disregarding the legislature's

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[1] A plurality African-American district is one in which African-American voters make up the largest single bloc of voters in the district, but do not consist of a majority.

intention as expressed in an enacted redistricting plan, unless it is necessary to avoid a constitutional or statutory violation:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." . . . An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham, 456 U.S. at 43 (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)); cf. *White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the district court erred because "in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan"). In other words, when a federal court is forced to order an interim redistricting plan, it must respect the state legislature's considered judgments whenever possible.

Citing this principle, federal courts have consistently adopted legislatively enacted plans with minimal changes notwithstanding the fact that these

plans had not received preclearance. See *Balderas v. Texas*, No. Civ.A. 6:01CV158, 2001 WL 34104833, at *3 (E.D. Tex. Nov. 28, 2001); *Terrazas v. Clements*, 537 F. Supp. 514, 546–47 (N.D. Tex. 1982); accord *Johnson v. Miller*, 929 F. Supp. 1529, 1563 (S.D. Ga. 1996); cf. *Burton v. Hobbie*, 543 F. Supp. 235, 239 (M.D. Ala.) (implementing an unprecleared state legislative plan on an interim basis, with limited modifications in response to DOJ objections, relying on *White v. Weiser*, *Upham v. Seamon*, and *Terrazas v. Clements*), aff'd, 459 U.S. 961 (1982). Balderas provides an illustrative and recent example. There, plaintiffs brought challenges against the State's congressional, House, and Senate plans. *Balderas v. Texas*, 2001 WL 34104833, at *1. For the congressional plan, the "the 77th State Legislature failed to adopt a redistricting plan." *Session v. Perry*, 298 F. Supp. 2d 451, 458, (E.D. Tex. 2004), aff'd in part, rev'd in part on other grounds, vacated in part sub. nom. *LULAC v. Perry*, 548 U.S. 399 (2006). Only "when . . . state court efforts failed, [did the federal court] recognize[] that the State's existing congressional districts were unconstitutionally malapportioned and reluctantly accept[] the duty to prepare a new, constitutional plan." Id. Without a state congressional plan to which it could defer, the Balderas court started from a blank slate in drawing its plan. However, for the House and Senate plan, where the State Legislative Redistricting Board had acted, the Court properly deferred to the State policies. See *Balderas v. Texas*, 2001 WL 34104833, at *3; *Balderas v. Texas*, No. Civ.A. 6:01CV158, 2001 WL 34104836, at *1-3 (E.D. Tex. Nov. 28, 2001). DOJ's objections to the LRB House Plan in Balderas

dictated changes to four districts. See *Balderas v. Texas*, 2001 WL 34104833, at *3.

Because the Court changed all 36 congressional districts, it is clear that the Court has showed no deference to the congressional redistricting plan enacted by the Texas Legislature.[2] But no material distinction separates Plan C185 from the plans properly accorded deference in Upham and Balderas. Indeed, if anything, more deference is owed to Plan C185 than to either of the plans at issue in Upham or Balderas. In each of those cases, the legislatively enacted plans had been denied preclearance. Here, Plan C185, currently the subject of a judicial preclearance action, may very well achieve preclearance.[3] This Court's quixotic interim congressional plan is based on the absurd premise that a legislatively enacted map that has been denied preclearance is accorded more deference than one where preclearance may likely still be achieved. That cannot be the case.

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[2] Indeed, this Court has already explicitly stated that it is "not required to give any deference to the Legislature's enacted plan," at least with respect to the legislatively enacted redistricting plan for the Texas House of Representatives. Order Adopting Plan H302, at 5.

[3] Unlike administrative preclearance, where the DOJ controls the outcome, the DOJ is a mere party to the judicial preclearance here. Thus, the Court must ascertain the universe of the DOJ's potential Section 5 objections to C185 from the pleadings rather than an objection letter. That the Court must look to pleadings instead of a letter denying preclearance as guidance does not empower the Court, in the name of equity, to alter dozens of districts that no party challenges.

B. The Proposed Plan Creates a Coalition District that is Not Compelled by the Voting Rights Act.

Plan C220 overturns the Legislature's will by creating a coalition district—District 33—in north Texas. Without identifying any violation of constitutional or federal law, the Court combined two distinct minority groups in what appears to be a deliberate effort to meet a 50% multi-racial minority population benchmark. See Plan C220, Red 106 (District 33 contains 21.1% HCVAP, 29.1% BCVAP, 44.2 Anglo CVAP, and 4.0% Asian CVAP). Section 2 of the Voting Rights Act does not require the State—or permit the Court—to create multi-racial coalition districts when no single, geographically compact minority group is large enough to make up the majority in a district. See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1243 (2009) ("Nothing in § 2 grants special protection to a minority group's right to form political coalitions."). Even if section 2 could be construed to require coalition districts in some instances, the Supreme Court has emphasized that such districts could be compelled only upon a heightened showing of voting cohesion between members of each group. See *Growe v. Emison*, 507 U.S. 25, 41, 42 (1993); cf. *Session v. Perry*, 298 F. Supp. 2d 451,483–84 (E.D. Tex. 2004) ("Properly confined, the [VRA] implements the fundamentals of factions. Unconfined it reaches into the political market and supports persons joined, not by race, but by common view. Serious constitutional questions loom at that juncture."), aff'd in part, rev'd in part on other grounds, vacated in part sub. nom. *LULAC v. Perry*, 548 U.S. 399 (2006). No evidence before this

Court demonstrates any voting cohesion—let alone heightened voting cohesion—among Latino, African-American, and Asian minority groups in District 33. Nor is there any evidence in the record that members of these minority groups have been effectively excluded from the political process.

The Court's proposed interim plan evidently displaces the Legislature's judgment for the purpose of allocating political control of congressional seats to racial and ethnic minority groups in proportion to their share of the State's population.[4] But proportionality cannot justify the Court's creation of coalition districts because section2 of the Voting Rights Act expressly rejects any right to proportional representation. See 42 U.S.C. § 1973(b) ("[N]othing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.").

Despite the express textual rejection of proportionality, this Court repeatedly implied that the State's congressional plan was legally deficient because it failed to account for Latino population growth by creating new Latino opportunity districts. See Trial Tr. at 2204:12–17; see also Trial Tr. at 2222:16–18 ("But if that's the case and you're only—by your argument, only creating one new Latino opportunity district, where's the equality in that?"); Trial Tr. at 1841:15–19 ("Are you surprised that given the minority growth in Texas, which counts for 66 percent of the growth, that Texas—that the

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[4] The Court's proposed plan contains eight Hispanic citizen voting age population districts, which is the same number created in the State's enacted plan.

legislature did not draw more than one minority opportunity district?"). The Court's apparent insistence that the State is required to achieve racially proportional representation through the creation of coalition districts is directly contrary to section 2. By acting on that mistaken reading of the VRA, this Court has exceeded its equitable authority to cure any alleged legal defects in the State's enacted plan.

C. The Proposed Plan Disregard the Legislature's Policy Choices Without Justification.

By altering every district in Plan C185, the redistricting plan proposed by the Court pays no deference to the choices of the Texas Legislature. Those choices reflect more than the preferences of individual legislators. The legislatively enacted plans incorporate constituents' concerns about communities of interest and proper representation that were received during the extensive redistricting hearings held in the legislative interim. See Exhibit A (letters from Congresspersons and Legislators objecting to the Court's proposed interim plan as not respecting communities of interest). Thus the Court's departure from the expressed will of the Legislature not only undermines the democratic process, it ignores the voice of the citizenry.

To take an obvious example, Plan C220 reconfigures District 27 so that it encompasses both Nueces County and Cameron County. This configuration directly disregards requests from the public and legislators that Nueces County and Cameron County serve as anchor counties in

separate congressional districts. At trial, the principal map drawer for the congressional plan, Ryan Downton, testified that the Legislature had two goals with respect to District 27 and District 34: (1) create a congressional district anchored in Cameron County; and (2) create a district in which Representative Farenthold could be re-elected. Trial Tr. at 1022:10–4 (testimony of Ryan Downton); see also Trial Exhibit J-58, Deposition of Doug Davis at 90:10–21 (stating that Legislature's goals were to create a Nueces County-based district for Congressman Farenthold and to "have the Valley be able to elect another Congressman"). The Legislature's initiative was supported by Senator Lucio (D-Brownsville) and Representative Oliveira (D-Brownsville)—Democratic legislators from Cameron County—both of whom specifically requested a congressional district anchored in Cameron County. Trial Tr. at 1022:17–18 (testimony of Ryan Downton). Likewise, evidence at trial confirmed that Nueces County was placed into a new congressional district based on requests from local officials that their county anchor a congressional district separate from the counties to its south. Trial Tr. at 1461:25–1462:7 (testimony of Gerardo Interiano); see also Trial Exhibit J-61, Deposition of Gerardo Interiano I, at 113:20–22. The Legislature's enacted congressional plan accomplishes all of these lawful and legitimate policy goals; theCourt's plan fulfills none of them.

The Court's plan also disregards the interests of the African-American community by reducing the number of African-American plurality districts, as measured by voting age population, from three to

two. Specifically, Plan C220 decreases the BVAP percentage in District 9 from 37.6% in Plan C185 to 37.0%. Compare Plan C220, Red 202 (District 9 contains 37.0% BVAP and 38.0% HVAP) with Plan C185, Red 202 (District 9 contains 37.0% BVAP and 35.8% HVAP). As African-Americans and Latinos approach equilibrium in District 9, Congresspersons Al Green and Eddie Bernice Johnson have cautioned the Court that "tension" will follow. See Trial Tr. at 1367:2-8 ("When equilibrium exists, then it could easily be the case that each party wants to have the same opportunity. So that's when you have unnecessary tension."); Trial Tr. at 1290:16-20 ("[W]hen you have a large number of people and you unfairly pile them together, then it creates tension, because everybody wants representation."). The Court's proposed plan produces a so-called "tension" district in District 9 as it creates an opportunity district that has elected an African-American to Congress since 2005 where Latinos now comprise a higher percentage of the voting age population than African-Americans. In the remaining plurality African-American, Districts 18 and 30, the Court's plan reduces BVAP in each district as compared to Plan C185. Compare Plan C220, Red 202 (District 18 contains 38.3% BVAP and District 30 contains 42.8% BVAP) with Plan C185, Red 202 (District 18 contains 40.5% BVAP and District 30 contains 46.5% BVAP).

D. The Proposed Plan Alters District 23 Even Though There Is No Demonstrated Section 2 or Section 5 Violation.

Plan C220 disregards the Legislature's will by making modifications to District 23 where no

probability of a legal wrong has been demonstrated. The Legislature maintained District 23's status as a majority-Latino CVAP and SSVR district by increasing these measures. The only difference between District 23 in Plan C185 and the benchmark plan is the Legislature's decision to protect the incumbent, Congressman Francisco Canseco, by including Republican-leaning areas. The Court's plan modifies District 23 by placing Maverick County wholly within this district and decreases the Hispanic citizen voting age population from 58.5% in Plan C185 to 57.3%. Compare Plan C185, Red 106 with Plan C220, Red 106. And if the Court redrew District 23 in order to make it "perform" better, it failed to do so. The reconstituted election analysis for the Court's proposed District 23 shows that the Latino candidate of choice will be elected in only 2 out of 10 elections. Exhibit B, Plan C220, District 23, Racially Polarized Voting Analysis.[5]

These changes are not within the Court's power. Plaintiffs have not demonstrated vote dilution in District 23 given that Plan C185 preserves and in fact improves Latino voters' opportunity—if they vote cohesively for a candidate—to elect that candidate regardless of how the Anglo minority votes. The Supreme Court has conclusively

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[5] Notably, the Court's proposed plan actually decreases the HCVAP percentages in District 23 from 58.4%in the benchmark to 57.3% in Plan C220. Compare Plan C100, Red 106 with Plan C220, Red 106. The reconstituted election analysis for benchmark District 23 also performs better than the Court's proposed district with the Latino candidate of choice being elected in 3 out of 10 elections.

established that "the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *LULAC v. Perry*, 548 U.S. 399, 428 (2006) (emphasis supplied) (internal citations omitted). Because Section 2 is about ensuring equal opportunity, not guaranteeing electoral results, the Court has made clear that "minority voters are not immune from the obligation to pull, haul, and trade to find [the] common political ground" necessary to elect their preferred candidates. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1997). The Legislature's configuration of District 23 provides Latino voters with at least an equal "opportunity" to elect the candidate of their choice.

Likewise, nothing about the Legislature's decision to split Maverick County between Districts 28 and 23 in Plan C185 demonstrates that race predominated in drawing district boundaries or that the Legislature intended to harm Latinos. Maverick County is 95% Latino, and there is no evidence in the record that any precinct splits that resulted in the Legislature's decision to split the County corresponded to race. As a result, the Court's decision to redraw District 23 in the utter absence of a violation of the Constitution or the VRA is improper.

While no changes to District 23 were necessary to remedy a legal harm, Defendants agree with the Court's refusal to redraw District 23 as requested by Plaintiffs and the DOJ. The Court's configuration of District 23 rejects Plaintiffs' efforts to transform the district into a district in which Democratic candidates are virtually guaranteed to win elections.

E. The Court's Plan Destroys District 35 In An Effort To Preserve A Crossover District That Is Not Protected By Section 2.

The Court's radical reconfiguration of District 35 destroys a community of interest that the Legislature found to exist between Latino voters in Travis and Bexar Counties. In the State's enacted plan, District 35 contains 58.3% HVAP, 51.9% HCVAP, and 45.0% Spanish surname voter registration. Plan C185, Red 109 Report. The reconstituted election analysis shows that this district is likely to elect the Latino candidate of choice ten out of ten elections. Trial Exhibit D-2, Plan C185, District 35, Racially Polarized Voting Analysis, at 821-32. By contrast, Plan C220 severs Travis County from District 35 and reduces the Hispanic citizen voting age population from 51.9% to 50.9%. Plan C220, Red 106. The Court's reconfiguration of District 35 also results in a district that will only elect the Latino candidate of choice in only 6 out of 10 elections. Exhibit C, Plan C220, District 35, Racially Polarized Voting Analysis.

The Court's plan disregards the policy choices the Legislature made in creating District 35, and as a result, harms communities of interest in this region of the State. The growth in the Latino community was so significant in Central Texas that the Legislature concluded the Latino population was sufficiently large and geographically compact such that it could support the creation of a new congressional district. See Trial Tr. at 915:17-22; see also D-43. Former Texas Senator Joe Bernal testified

on behalf of the Latino Task Force Plaintiffs that Southeast Austin and the Southside and Westside of San Antonio—all of which are major urban areas included in District 35—share common interests that would allow the two areas to be combined in a congressional district. Trial Tr. at 557:7-559:3. Further, Mr. Downton's testimony showed that it is not unusual for areas in San Antonio and Austin to be combined in a congressional district. Trial Tr. at 944:11-22; see also Trial Exhibits 305 and 306. Additionally, Mr. Downton testified that certain areas in Travis and Bexar Counties were included within District 35 in order to keep Latino communities of interest together. See Trial Exhibit J-62, Deposition of Ryan Downton at 114-25-116:7, 118:13-119:4, 121:22-25.

While the Court fails to identify the legal violation that justifies the dismantling of District 35 in the State's enacted plan, the only possible justification appears to be the preservation of District 25. In the benchmark plan, District 25 is best defined as a crossover district given that it is comprised of a majority Anglo population and a combination of the African-American and Latino populations forms less than a majority of the citizen voting age population. See Plan C185 (District 25 contains 25.3% HCVAP, 9.0% BCVAP, 53.1% Anglo CVAP). The Court's plan maintains the crossover nature of District 25. See Plan C220, Red 106 (District 25 contains 24.3% HCVAP, 9.8% BCVAP, and 61.9% Anglo CVAP). It is well established that the Voting Rights Act does not require the State—or permit the Court—to create crossover districts or, more importantly, maintain such districts absent a

demonstration of intentional racial discrimination under the Fourteenth Amendment. See Bartlett, 129 S.Ct. at 1246. There is no evidence that the Legislature's treatment of District 25 resulted from actual intent to harm the voters of that district because of their race or ethnicity. The "tri-ethnic coalition" that allegedly inhabits District 25 is, by definition, united by a single non-racial characteristic that this Court has decided to preserve: preference for Democratic candidates. Accordingly, there is no plausible justification under the Fourteenth Amendment for this Court's decision to maintain District 25.

F. The Proposed Plan Contains Unlawful Population Deviations.

Plan C220 contains population deviations that violate the strict population equality standards for congressional districts. *See Mahan v. Howell*, 410 U.S. 315, 322 (1973); see also Plan C220, Red 100. The Supreme Court has recognized "no excuse for the failure to meet the objective of equal representation for equal numbers of people in congressional districting other than the practical impossibility of drawing equal districts with mathematical precision." Mahan, 410 U.S. at 322. Plan C185 proves the possibility of drawing equal districts with mathematical precision. The small deviations in Plan C220 therefore appear to be the inevitable consequence of balancing competing policy concerns among different districts. But "federal courts . . . possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name." *Connor v. Finch*, 431 U.S. 407, 415 (1977). They

therefore lack the equitable power to impose congressional plans that deviate from perfect population equality.

CONCLUSION

The *ultra vires* decisions embodied in the Court's proposed interim plan eviscerate countless legitimate, considered judgments of the Texas Legislature. Indeed, the Court's proposal denies the Legislature the presumption of good faith and legality to which it is entitled. Moreover, it does so without any explanation, much less a compelling and narrowly tailored justification for the remedy it imposes. The Court's proposal appears to reflect the policy choices of unelected federal judges, rejecting without explanation or justification the will of the people of the State of Texas as reflected in the plans enacted by their duly elected representatives.

Dated: November 25, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Civil Action No. 11-CA-360-OLG-JES-XR
[Lead case]

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

FILED: 11/27/11
Document 545

DEFENDANTS' MOTION TO STAY IMPLEMENTATION OF INTERIM CONGRESSIONAL REDISTRICTING PLAN PENDING APPEAL

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, the "State Defendants") respectfully ask the Court to stay pending appeal its order dated November 26, 2011, which directs implementation of an interim redistricting plan for Texas' United States House of Representatives districts. State Defendants also request further relief described below.

Judge Smith's dissent correctly identifies the fundamental flaw in the majority's approach to

crafting an interim congressional redistricting plan: "Although the Department of Justice objected to only two districts in the State's enacted plan, C220 changes all thirty-six districts from their configuration in C185." See Order Implementing Interim Congressional Plan at 18 (Doc. 544) (dated Nov. 26, 2011) (Smith, J., dissenting). Even if preclearance were to be denied based on the DOJ's objection to two districts, the rest of the map would be entitled to deference under *Upham v. Seamon*, 456 U.S. 37 (1982). The majority, however, showed less deference to a map on which preclearance is pending than must be shown to a map on which preclearance has been denied. Despite the lack of any finding that the Legislature's plan likely violates the law, the majority took it upon itself to completely redraw the entire map. It did so even though the vast majority of congressional districts in the Legislature's plan were not even alleged to be unlawful by the Department of Justice in Section 5 proceedings or by plaintiffs in this case.

The majority's order imposing an interim congressional plan should be immediately stayed to allow the Supreme Court to clarify the level of deference owed to legislatively enacted redistricting maps for which preclearance is pending. As Judge Smith recognized in his dissent from the denial of a stay of interim Texas House and Texas Senate maps, a stay is the only way to ensure that "the Supreme Court will have sufficient time to address the complex legal issues that apply to interim plans." Order Denying Motion to Stay Implementation of Interim Texas House Plan at 6 (No. 543) (dated Nov. 25, 2011) (Smith, J., dissenting) (identifying four,

independent legal issues on which guidance from the Supreme Court is essential).

ARGUMENT AND AUTHORITIES

A stay pending appeal is entirely appropriate pending expeditious appellate review of important issues such as those presented by this Court's interim order. Indeed, the Supreme Court has itself routinely granted stays of interim redistricting plans pending its consideration of orders similar to this Court's interim order. *McDaniel v. Sanchez*, 448 U.S. 1318 (1980) (Powell, J., in chambers); *Bullock v. Weiser*, 404 U.S. 1065 (1972) (stay order), rev'd onsubstantive grounds sub nom. *White v. Weiser*, 412 U.S. 783, 789 (1973); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970) (stay order), rev'd on substantive grounds and remanded, 403 U.S. 124 (1971).

This Court's interim order regarding Texas' congressional districts is akin to a preliminary injunction, and a preliminary injunction of any sort is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 676 (2008). A court will stay its injunction pending appeal where, as here, the moving party can demonstrate: (1) that it is likely to succeed on the merits; (2) that it would suffer irreparable injury if the stay were not granted; (3) that granting the stay would not substantially harm the other parties; and (4) that granting the stay would serve the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Under *Ruiz v. Estelle*, the preceding test is flexible, and a movant can obtain a stay pending appeal by showing "a substantial case on the merits when a serious legal question is involved" and by showing that "the balance of the

equities weighs heavily in favor of granting the stay." 650 F.2d 555, 556 (5th Cir. 1981); see also *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) ("The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay.").

First, this Court's interim order violates *Upham v. Seamon*, 456 U.S. 37 (1982), and will likely be reversed on appeal. Upham requires a district court enacting interim redistricting plans to defer to legislatively enacted maps unless the court is required to address a likely constitutional or statutory violation. *Id.* at 44. Nevertheless, as noted by Judge Smith in dissent, although the Department of Justice ("DOJ") objected to only two districts in the State's enacted plan, the Court's interim congressional plan alters all 36 districts, including many districts where no constitutional or statutory violation was even alleged, much less shown to be likely. *See* Order Implementing Interim Congressional Plan, at 18 (Doc. 544) (dated Nov. 26, 2011) (Smith, J., dissenting).

Second, implementation of the interim redistricting plan will cause substantial and irreparable harm to the State of Texas and its citizens. Specifically, even the temporary invalidation of a statute irreparably injures the State; by itself, it constitutes sufficient grounds for a stay. *See New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a Court from effectuating statutes enacted by representatives of its people, it suffers a form of

irreparable injury."). But more troubling is the injury that will result from allowing the 2012 Texas congressional elections to go forward on an improperly constructed redistricting plan. Once done, the harm caused to the State and its citizens by legally flawed elections cannot be undone even if the elections are later invalidated, because the results of the election would be irreversible. *See Lucas v. Townsend*, 486 U.S. 1301, 1304 (Kennedy, J., in chambers). As Judge Smith recognizes, "[t]hat is why the more orderly course is for this court to stay its proceedings, before filing for office begins in Texas on November 28, so that the Supreme Court will have sufficient time to address the complex legal issues that apply to interim plans." Order Denying Motion to Stay Implementation of Interim Texas House Plan, at 5-6 (No. 543) (dated Nov. 25, 2011) (Smith, J., dissenting).

Third, the injury the court's order inflicts on the State and its citizens outweighs any harm that would be caused to the plaintiffs by a stay. Plaintiffs would suffer little—if any—harm from a stay of the Court's interim redistricting plans pending appeal. In contrast, the harm caused to the State and all its citizens when an election takes place under a legally flawed redistricting plan is both substantial and irreversible.

Finally, the public interest is clearly best served by a stay of this Court's interim redistricting plan.

I. STATE DEFENDANTS WILL LIKELY PREVAIL ON THE MERITS IN THE UNITED STATES SUPREME COURT.

Because the Court's interim redistricting plan for Congress completely supplants the State's legislatively enacted plan without legal justification, the Court should stay its order pending review by the United States Supreme Court. As explained below, the Court's plan is contrary to Supreme Court precedent governing the constitutionally permissible role of race in redistricting and exceeds the equitable jurisdiction afforded to courts faced with the need to draw interim plans. *Upham v. Seamon,* 456 U.S. 37 (1982). The Supreme Court is likely to conclude that this Court went beyond its authority in altering districts beyond those necessary to remedy statutory or constitutional defects.

A. The Interim Redistricting Plan Alters Districts Beyond Those Necessary to Remedy Constitutional or Voting Rights Act Violations.

The Supreme Court has unambiguously prohibited lower courts from issuing interim redistricting maps that deviate from the legislature's intention in an enacted redistricting plan, except where doing so is necessary to avoid a constitutional or statutory violation:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." . . . An

> appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham v. Seamon, 456 U.S. 37, 43 (1982) (per curiam) (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)); cf. *White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the district court erred because "in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan"). In Upham, preclearance had been ***denied***. Here, no preclearance decisions have been reached due to the Section 5 court's understandable confusion about the applicable legal standards and the DOJ's dilatory litigation tactics. As a result, no court has concluded that the State's maps violate section 5, section 2, or the U.S. Constitution. Yet this Court shows less deference to the State's enacted congressional plan than was shown in Upham to a map that had been ***denied*** preclearance. It defies logic to conclude that a map adjudged to violate section 5 should receive more deference than a map for which preclearance is currently being sought and may ultimately be granted. The Court is obliged on the contrary to presume the validity of the map and, at a minimum, was obliged before making changes to the map to

find a legal basis for those changes—i.e., some basis for concluding that the maps will not be precleared before the general election and making changes only in those districts likely to be affected. Upham plainly controls this case, and under Upham, when a federal court is forced to order an interim redistricting plan, it must respect the state legislature's policy judgments wherever possible.

The interim congressional redistricting plan undermines the Legislature's policy choices by altering all 36 congressional districts in the State's enacted plan. The Court's interim plan includes changes to many districts that have never been alleged to violate the Voting Rights Act. This conflicts with the Supreme Court's holding that an interim plan must "reconcil[e] the requirements of the Constitution with the goals of state political policy." Upham, 456 U.S. at 43 (quoting Connor, 431 U.S. at 414). Changing legislatively enacted districts for which there is no section 2, section 5, or constitutional violation alleged—much less a demonstrated likelihood that such a challenge would succeed on the merits—was clear error that is likely to be reversed on appeal.

B. The Interim Redistricting Plan Creates Coalition Districts That Are Not Compelled By the Voting Rights Act.

The interim redistricting plan overturns the Legislature's will by creating a coalition district in north Texas in which minority groups must be combined in order to meet the 50% citizen voting age population benchmark. Without identifying any violation of constitutional or federal law, the Court

combined two distinct minority groups in what appears to be a deliberate effort to meet a 50% multi-racial minority population benchmark. See Plan C220, Red 106 (District 33 contains 21.1% HCVAP, 29.1% BCVAP, 44.2% Anglo CVAP, and 4.0% Asian CVAP). Section 2 of the Voting Rights Act does not require the State—or permit the Court—to create multi-racial coalition districts when no single, geographically compact minority group is large enough to make up the majority in a district. *See Bartlett v. Strickland,* 129 S. Ct. 1231, 1243 (2009) ("Nothing in § 2 grants special protection to a minority group's right to form political coalitions.").

Even if section 2 could be construed to require coalition districts in some instances, the Supreme Court has emphasized that such districts could be compelled only upon a heightened showing of voting cohesion between members of each group. *See Growe v. Emison*, 507 U.S. 25, 41, 42 (1993); cf. *Session v. Perry*, 298 F. Supp. 2d 451,483–84 (E.D. Tex. 2004) ("Properly confined, the [VRA] implements the fundamentals of factions. Unconfined it reaches into the political market and supports persons joined, not by race, but by common view. Serious constitutional questions loom at that juncture."), aff'd in part, rev'd in part on other grounds, vacated in part sub. nom. *LULAC v. Perry*, 548 U.S. 399 (2006). There is no evidence beforethis Court demonstrating any voting cohesion—let alone heightened voting cohesion—among Latino, African-American, and Asian minority groups in District 33. See Order Implementing Interim Congressional Plan, at 19 ("Latinos and Blacks do not vote cohesively in the

Democratic primaries in the area of proposed District 33.") (Smith, J., dissenting).

The Court's interim plan displaces the Legislature's judgment with the apparent goal of allocating control of congressional seats to racial and ethnic minority groups in proportion to their share of the State's population. See Order Implementing Interim Congressional Plan, at 13-14 (Smith, J., dissenting). But proportionality cannot justify the Court's creation of coalition districts because section 2 of the Voting Rights Act expressly rejects any right to proportional representation. See 42 U.S.C. § 1973(b) ("[N]othing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."). The Court's apparent insistence that the State is required to achieve racially proportional representation through the creation of coalition districts is directly contrary to section 2. By acting on that mistaken reading of the VRA, this Court has exceeded its authority to cure legal defects in the State's enacted plan.

C. The Interim Plan Alters District 23 and District 27 Even Though There Is No Demonstrated Section 2 or Section 5 Violation.

The Court's interim plan disregards the Legislature's will by making modifications to District 23 and District 27 where no probability of a legal wrong has been demonstrated. The Legislature maintained District 23's status as a majority-Latino CVAP and Spanish surname voter registration district by increasing these measures. The only

difference between District 23 in Plan C185 and the benchmark plan is the Legislature's decision to protect the incumbent, Congressman Francisco Canseco, by including Republican-leaning areas. The Court's plan modifies District 23 by placing Maverick County wholly within this district and decreases the Hispanic citizen voting age population from 58.5% in Plan C185 to 57.3%. Compare Plan C185, Red 106 with Plan C220, Red 106.

These changes are not within the Court's power. Plaintiffs have not demonstrated vote dilution in District 23 given that Plan C185 preserves, and in fact improves, Latino voters' opportunity—if they vote cohesively for a candidate—to elect that candidate regardless of how the Anglo minority votes. The Supreme Court has conclusively established that "the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *LULAC v. Perry*, 548 U.S. 399, 428 (2006) (emphasis supplied) (internal citations omitted). Because section 2 is about ensuring equal opportunity, not guaranteeing electoral results, the Court has made clear that "minority voters are not immune from the obligation to pull, haul, and trade to find [the] common political ground" necessary to elect their preferred candidates. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1997).

The Legislature's configuration of District 23 provides Latino voters with at least an equal "opportunity" to elect the candidate of their choice. While the Court apparently agreed with the State that a heavily packed Latino district should not be created in order to guarantee Democratic candidates

a victory, the Court nevertheless thwarted the will of the people of Texas by changing District 23. The only possible justification for the court's redrawing of District 23 would be to improve the electoral chances of Latino candidates in this district. Yet the Court's plan does not improve the performance of Latino candidates in District 23 as compared to the State's enacted plan, as the Latino candidate of choice will be elected in only two of ten reconstituted elections.

Similarly, the Court's reconfiguration of District 27, despite the lack of any plausible constitutional or statutory violation, ignores the policy judgments made by the Legislature. The Court's plan disregards requests from the public and legislators that Nueces County and Cameron County serve as anchor counties in separate congressional districts. District 27 is changed dramatically from the State's enacted plan "such that Nueces County will be the largest county in Texas that does not control its own congressional district." Order Implementing Interim Congressional Plan, at 18-19 (Smith, J., dissenting). The Legislature's enacted congressional plan accomplishes the Legislature's lawful and legitimate policy goals; the Court's plan rejects them.

D. The Court's Plan Destroys District 35 In An Effort To Preserve A Crossover District That Is Not Protected By Section 2.

The Court's radical reconfiguration of District 35 destroys a community of interest that the Legislature found to exist between Latino voters in Travis and Bexar Counties. In the State's enacted plan, District 35 contains 58.3% HVAP, 51.9%

HCVAP, and 45.0% Spanish surname voter registration. Plan C185, Red 109 Report. The reconstituted election analysis shows that this district is likely to consistently elect the Latino candidate of choice. By contrast, the Court's plan severs Travis County from District 35 and reduces the Hispanic citizen voting age population from 51.9% to 50.9%. Plan C220, Red 106. The Court's reconfiguration of District 35 also results in a district that will less consistently elect the Latino candidate of choice.

While the Court fails to identify the legal violation that justifies the dismantling of District 35 in the State's enacted plan, the only justification appears to be the preservation of the former District 25, in direct contravention of the State's legislative and political program. Nevertheless, the VRA does not require the State or permit the Court to maintain a crossover district absent a demonstration of intentional racial discrimination under the Fourteenth Amendment. *See Bartlett*, 129 S.Ct. at 1246; *see also LULAC v. Perry*, 548 US 399, 444 (2006) ("In short, that Anglo Democrats control [Martin Frost's former minority influence] district is, 2according to the District Court, the most rational conclusion.") (internal quotation marks and citations omitted). No such showing has been made in this case. The Court's decision to preserve this crossover district is even more troubling given that the DOJ did not challenge District 25 under section 5.

II. STATE DEFENDANTS WILL SUFFER IRREPARABLE INJURY ABSENT A STAY.

The immediate implementation of the interim redistricting plan would prevent the State from enforcing a legislative plan that was enacted by the Texas Legislature. The enacted congressional redistricting plan passed with overwhelming majorities in both houses of the Legislature. Enjoining this legislation, as the Court has done, unquestionably causes irreparable harm to the State and its citizens. As the Supreme Court has stated, even the temporary invalidation of a state statute irreparably injures the government and itself constitutes sufficient grounds to enter a stay. *See New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a Court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."); *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people . . . is enjoined.").

Beyond the harm inherent in blocking implementation of state law, a special harm arises when an election is permitted to go forward based on an illegal, court-drawn redistricting plan. As Judge Smith recognized in his dissent related to the Texas House maps, if a stay is not granted to allow for appellate review of this Court's decisions, this case will essentially be over. See Order at 15, dated Nov. 23, 2011 (No. 528) (Smith, J., dissenting). If that happens, the State's elections will be conducted on improperly constructed maps. The candidate filing

period will begin under the Court's legally flawed, unreviewed map on Monday, November 28, and absent a stay there will soon be no alternative other than to continue with elections on an improper map. The irreparable harm such a result would inflict on our democratic process and on all Texas voters requires no explanation. For these reasons, the Supreme Court has frequently stayed unlawful court-drawn plans in similar instances. *McDaniel v. Sanchez*, 448 U.S. 1318

1980) (Powell, J., in chambers); *Bullock v. Weiser*, 404 U.S. 1065 (1972) (stay pending appeal in *White v. Weiser*, 412 U.S. 783, 789 (1973)); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970) (stay order).

III. STATE DEFENDANTS' IRREPARABLE INJURIES OUTWEIGH ANY HARM TO PLAINTIFFS.

Plaintiffs will suffer no harm should the Court stay its order implementing the interim redistricting plan pending appeal. Any party that benefits from an improper interim redistricting map suffers no cognizable injury from a stay pending appellate review. In any case, Plaintiffs' right to vote and to participate equally in the political process will not be abridged by a mere delay in the final determination of electoral districts for the 2010 election. By contrast, refusing to issue a stay of an improper interim map will cause irreparable harm to the people of Texas. The election of an entirely new legislature under a plan other than the one enacted by the duly elected representatives of this State would be irreversible. *See Lucas v. Townsend*, 486 U.S. 1301, 1304 (Kennedy, J., in chambers) ("Even if

the election is subsequently invalidated, the effect on both the applicants and respondents likely would be most disruptive.").

IV. A STAY PENDING APPEAL IS—BY DEFINITION—IN THE PUBLIC INTEREST.

A stay of the preliminary injunction would allow State Defendants to carry out the statutory policy of the Legislature, which "is in itself a declaration of the public interest which should be persuasive." *Virginian Ry. Co. v. Sys. Fed'n* No. 40, 300 U.S. 515, 552 (1937); *Illinois Bell Telephone Co. v. WorldCom Technologies, Inc.*, 157 F.3d 500, 503 (7th Cir. 1998) ("When the opposing party is the representative of the political branches of a government the court must consider that all judicial interference with a public program has the cost of diminishing the scope of democratic governance.").

CONCLUSION & PRAYER

State Defendants respectfully request that the Court stay its order imposing an interim redistricting plan for Texas' United States House of Representatives districts pending appeal. The State further requests that, pending appeal, this Court stay the candidate filing and qualification deadlines for Texas' United States House of Representatives districts (as prescribed

by State law and modified by order of this Court).

Further, the State recognizes that in order to preserve the Supreme Court's jurisdiction and provide the Supreme Court with adequate time to correct this Court's errors, it may become necessary

to delay the primary elections for the Texas' United States House of Representatives districts. While all unaffected primary elections will continue as scheduled on March 6, 2012, the State is prepared to delay its congressional primary elections in order to ensure that it is not forced to conduct elections using a legally flawed map. By delaying the primary elections pending appeal—if that should become necessary—the State can ensure that its citizens will have the opportunity to vote in elections under redistricting plans determined to be lawful by the United States Supreme Court.

To that end, the State requests any and all relief the Court deems necessary to effectuate the Supreme Court's appellate jurisdiction, including but not limited to a stay of the primary election dates for Texas' United States House of Representatives districts.

Dated: November 27, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texa

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

No. SA: 11-CV-360

SHANNON PEREZ, ET AL,

Plaintiffs,

v.

RICK PERRY, ET AL.,

Defendants.

FILED: 11/29/11
Document 548

AMENDED NOTICE OF APPEAL

Notice is hereby given that Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas, Defendants in the above-named case, hereby appeal to the United States Supreme Court, pursuant to 28 U.S.C. § 1253, this Court's interlocutory order of November 23, 2011 (Doc. 528), directing implementation of PLAN H302 as an interim plan for districts used to elect members of the Texas House of Representatives in 2012, and this Court's interlocutory order of November 26, 2011 (Doc. 544), directing implementation of PLAN C220 as an interim plan for districts used to elect

members of the United States House of Representatives in 2012.

Dated: November 29, 2011

Respectfully Submitted,

GREG ABBOTT

Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 11/25/11
Document 92

AMENDED ORDER

Defendants' motion to stay implementation of the court-drawn interim senate redistricting plan pending appeal (Dkt. No. 90) is DENIED for the reasons given in this Court's Order dated November 23, 2011. As stated in that Order, when there is no other legally enforceable plan in effect, this Court is required to craft an independent court-drawn interim map. The State has misinterpreted the applicable case since the inception of the interim court plan process. The State insists that the Court must simply adopt its enacted unprecleared plan, making only minimal changes, if any, to "remedy" any constitutional or statutory violations. The State continues to rely on *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982), which is clearly inapposite to the situation that the Court faces herein. In *Upham*, the district court was faced with drawing a remedial

plan after preclearance of the State's enacted plan had been denied. In the remedial phase, under *Upham*, the district court's task would be limited to remedying the portions of the map known to be retrogressive or otherwise violating the Voting Rights Act or the U.S. Constitution. Had the State chosen the path of administrative preclearance through the Department of Justice, we would perhaps be in the remedial phase right now. However, the State chose to file a lawsuit in the United States District Court in the District of Columbia, which is still pending, and we are not in the remedial phase. Instead, we are in an interim phase where the Court has been placed in the position of crafting an independent court drawn plan that complies with the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act. In doing so, the Court is precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan. *See Lopez v. Monterey County*, 519 U.S. 9, 117 S.Ct. 340(1996)(district court erred when it failed to independently craft an electoral plan and instead adopted the County's proposal, which required preclearance); *see also McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224 (1981)(district courterred in adopting the County's plan, which required preclearance). It is undisputed that the "failure to obtain either judicial or administrative preclearance renders the [voting] change unenforceable," *Clark v. Roemer*, 500U.S. 653, 111 S.Ct. 2096, 2101 (1991), and the Court cannot simply

adopt an unprecleared redistricting plan, in whole or in part, with the signatures of a few judges sitting in Texas.

Further, the Court's order is not akin to a preliminary injunction as the State suggests. The only request for injunctive relief that has been raised in this lawsuit is the plaintiffs' request that the State's enacted plan be enjoined from implementation because it has not been precleared. *See Clark*, 111 S.Ct. at 2101 (if there has been no preclearance, plaintiffs are entitled to an injunction prohibiting the State from implementing the changes). However, since the inception of this lawsuit, the State has admitted that its enacted plan must be precleared prior to implementation. Yet it has persisted in trying to avoid preclearance altogether by demanding that its unprecleared plan be adopted by the Court as an interim court drawn plan. Again, the dictates of the U.S. Supreme Court preclude this Court from doing so.

The dissent has somewhat embraced the State's arguments, and also relies on *Upham*, even though this Court has not arrived at the remedial stage of these proceedings. Likewise, the dissent tries to distinguish *Lopez* based on the procedural posture of the preclearance proceedings in this matter. However, there was no preclearance in *Lopez* and there is no preclearance in this case. At the end of the day, no preclearance means no preclearance, and no enforceable plan. The dissent also fails to appreciate that the Court has drawn an independent redistricting plan without ruling on any of the various legal challenges, and it has considered the parties' legal challenges only for the purpose of

avoiding the same legal challenges to the court drawn map. *See Conner v. Waller*, 421 U.S. 657, 95 S.Ct. 2003 (1975)(the district court cannot decide the constitutional challenges to the challenged, unprecleared plan). The Court's Senate plan clearly rises above the myriad of challenges to the State's enacted plan and allows a free and fair election in 2012.

In conclusion, the State claims that it will be irreparably injured if a stay is not granted. However, the individuals who would suffer irreparable injury if the stay were granted are the citizens of Texas, by being deprived of the opportunity to vote in the upcoming election under the schedule currently in place.

SIGNED this 25th day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

/s/

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

JERRY E. SMITH, Circuit Judge, dissenting:

Because a stay of the orders implementing interim plans for the 2012 elections is needed to allow orderly review and clarification of critical legal issues, and because a stay will not harm any party, I respectfully dissent from the denial of a stay. In its order announcing an interim redistricting plan for the Texas House of Representatives, the majority acknowledged that these are difficult issues and

reasonable minds can disagree. It is therefore puzzling that the majority is unwilling to stay its order so that those difficult issues can be addressed on appeal before the announced interim plans are implemented.

There are myriad issues to be decided regarding interim, court-ordered redistricting plans. Because these matters are usually raised only in the wake of the decennial census, the caselaw is somewhat sparse and often murky. Questions that are not addressed now, before any part of these interim plans are implemented, might not be answered for yet another ten years or more. That is why the more orderly course is for this court to stay its proceedings, before filing for office begins in Texas on November 28, so that the Supreme Court will have sufficient time to address the complex legal issues that apply to interim plans.

Here are the issues most begging for resolution or explication:

1. In fashioning a temporary interim redistricting plan, how much deference should a court give to state-enacted legislative plans where a determination for preclearance has been submitted but is pending in: (1) districts that have not been specifically challenged; (2) districts that have been challenged under novel legal theories; (3) districts that have been challenged but as to which the challenges are unlikely to succeed on the merits; and (4) districts that have been challenged where the claims have a likelihood of success on the merits? In *Upham v. Seamon*, 456 U.S. 37 (1982), the Court directed lower courts to modify a state's legislative

plans only where absolutely required by law in a situation in which a determination on preclearance had been made and two of the districts in the State's plan had failed preclearance. *See also White v. Weiser*, 412 U.S. 783, 794-95 (1973). In contrast, the Court in *Lopez v. Monterey County*, 519 U.S. 9 (1996), rejected a lower court's wholesale implementation of a county's plan as an interim plan where the county had failed even to submit the plan for preclearance, defying a court order and despite being on notice for five years.

The instant case falls somewhere in between the situations in *Seamon* and *Lopez*: The State of Texas here has not attempted to frustrate or obviate the preclearance process but instead has timely submitted its maps to the D.C. District Court (unlike the county in *Lopez*), but the D.C. court has not yet ruled on preclearance (unlike the Department of Justice in *Seamon*, which had ruled on preclearance). Although the majority, as to the Texas House of Representatives, contends that the many challenges to the State's plan makes it ìimpossible to give substantial deference to the State's plan,î the very existence of my proffered alternative plan, H299, shows that it is possible to give more deference than the majority did while still taking the plaintiffs' challenges seriously. It would be of greater assistance for the Supreme Court to provide guidance on this issue.

2. In a court-ordered interim plan, how much population deviation is permissible in districts unchallenged by the plaintiffs or districts without meaningful one-person one-vote issues? The majority, relying on *Connor v. Finch*, 431 U.S. 407,

414 (1977), modified the State's enacted districts to bring them into *de minimis* deviation, even in districts unchallenged by the plaintiffs.

In contrast, my map left the unchallenged districts, which had population deviations within the legally permissible range for legislatures (but were not *de minimis*), intact, in accordance with the guidance given in *Seamon*, which held that the stricter *Connor* standard cannot be the sole basis for modifying a state's redistricting, but instead is applicable only where a specific violation was found and a remedial district was being drawn. *Seamon*, 465 U.S. at 43.

3. For purposes of section 2 and section 5 of the Voting Rights Act, is election ìperformanceî relevant or, or instead is the relevant measure the percentage of citizen voting age population? The majority redrew Districts 77 (in El Paso County) and 117 (in Bexar County) because, under, the State's plan, the district does not ìperformî often enough (*i.e.*, it was likely to elect a Republican) despite Hispanics' comprising an overwhelming majority of the citizen voting age population in those districts (73% and 63%, respectively). In contrast, I read the section 2 caselaw to say that performance is not a relevant measure, *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994), but rather the relevant measure is the majority-minority requirement, *Barlett v. Strickland*, 556 U.S. 1, __, 129 S. Ct. 1231, 1244-45 (2009).

I have not found, nor has the majority cited, any caselaw to the contrary. That said, there is little to no guidance about whether a court should consider

performance in a section 5 retrogression or discriminatory intent analysis, so it would be helpful for the Supreme Court to provide clarity on this question.

4. May a court order the creation of minority ìcoalitionî districts in an interim plan, and, if so, under what circumstances? Though the Court in *Bartlett* rejected the contention that ìcross-overî districts are covered by section 2, some of its language calls into question whether ìcoalitionî districts are similarly covered (although the Court did expressly reserve the question). The majority created such coalition districts in Dallas County (HD 107), Fort Bend County (HD 26), and Bell County (HD 54). Districts 26 and 54 relied on Asian votes to form a ìcoalition,î despite the lack of evidence showing cohesion between Asians and Blacks or Hispanics in voting.

Though the majority contends these new coalition districts arose ìnaturallyî from a restoration to the *status quo*, it is hard to see how that could be the case: For example, HD 107 was substantially reconfigured from the *status quo* (composed of less than 40% of HD 107 in the benchmark plan) to exclude Anglo voters and include minority voters, reducing the Anglo citizen proportion by 33%. Similarly, Districts 26 and 54 were altered from the *status quo* by removing almost exclusively white populations instead of reducing the population in a race-neutral manner. Although my proposed alternate plan creates a new coalition district in Tarrant County, it is the identical new district created by the State (and dismantled by the majority), and the State has unquestionable latitude

to create such districts so long as it does not subordinate traditional redistricting principles to race.

The lack of clarity regarding coalition districts is evidenced by a circuit split on whether they may ever be required. The Fifth Circuit has treated the question as one of fact, holding that it is not clearly erroneous for a district court to find the first Gingles requirement satisfied by aggregating minority groups to reach the 50% threshold. *See Campos v. City of Baytown, Tex.*, 840 F.2d 1240 (5th Cir. 1988). The Sixth Circuit, however, has held that the text of the VRA does not allow its application to coalitions of minority groups. *See Nixon v. Kent Cnty.*, 76 F.3d 1381 (6th Cir. 1996). This issue cries out for clarification.

In its motion for stay, the State concedes that it may become necessary to delay the primary elections pending appellate review of issues regarding the interim plans. Indeed, Texas has some of the earliest primaries--perhaps the very earliest--in the United States. A delay of even a few weeks would still provide ample time for orderly primaries and runoffs well in advance of the November elections. But long before any such adjustment might become necessary, the first step should be for entry of a stay of this court's orders imposing interim redistricting plans for the Texas House of Representatives and the Texas Senate and, once this court imposes an interim Congressional plan, a stay of that order as well. Likewise, a temporary stay should be entered of candidate filing and qualifications deadlines for all elective offices so that filing does not begin on November 28.

The majority's refusal to enter a stay under these compelling circumstances is error. I therefore respectfully dissent.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 11/25/11
Document 91

ORDER

Defendants' motion to stay implementation of the court-drawn interim house redistricting plan pending appeal (Dkt. No. 90) is DENIED for the reasons given in this Court's Order dated November 23, 2011. As stated in that Order, when there is no other legally enforceable plan in effect, this Court is required to craft an independent court-drawn interim map. The State has misinterpreted the applicable case since the inception of the interim court plan process. The State insists that the Court must simply adopt its enacted unprecleared plan, making only minimal changes, if any, to "remedy" any constitutional or statutory violations. The State continues to rely on *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982), which is clearly inapposite to the situation that the Court faces herein. In *Upham*, the district court was faced with drawing a remedial

plan after preclearance of the State's enacted plan had been denied. In the remedial phase, under *Upham*, the district court's task would be limited to remedying the portions of the map known to be retrogressive or otherwise violating the Voting Rights Act or the U.S. Constitution. Had the State chosen the path of administrative preclearance through the Department of Justice, we would perhaps be in the remedial phase right now. However, the State chose to file a lawsuit in the United States District Court in the District of Columbia, which is still pending, and we are not in the remedial phase. Instead, we are in an interim phase where the Court has been placed in the position of crafting an independent court drawn plan that complies with the U.S. Constitution and Sections 2 and 5 of the Voting Rights Act. In doing so, the Court is precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan. See Lopez v. Monterey County, 519 U.S. 9, 117 S.Ct. 340 (1996)(district court erred when it failed to independently craft an electoral plan and instead adopted the County's proposal, which required preclearance); *see also McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224 (1981)(district court erred in adopting the County's plan, which required preclearance). It is undisputed that the "failure to obtain either judicial or administrative preclearance renders the [voting] change unenforceable," *Clark v. Roemer*, 500 U.S. 653, 111 S.Ct. 2096, 2101 (1991), and the Court cannot simply

adopt an unprecleared redistricting plan, in whole or in part, with the signatures of a few judges sitting in Texas.

Further, the Court's order is not akin to a preliminary injunction as the State suggests. The only request for injunctive relief that has been raised in this lawsuit is the plaintiffs' request that the State's enacted plan be enjoined from implementation because it has not been precleared. *See Clark*, 111 S.Ct. at 2101 (if there has been no preclearance, plaintiffs are entitled to an injunction prohibiting the State from implementing the changes). However, since the inception of this lawsuit, the State has admitted that its enacted plan must be precleared prior to implementation. Yet it has persisted in trying to avoid preclearance altogether by demanding that its unprecleared plan be adopted by the Court as an interim court drawn plan. Again, the dictates of the U.S. Supreme Court preclude this Court from doing so.

The dissent has somewhat embraced the State's arguments, and also relies on *Upham*, even though this Court has not arrived at the remedial stage of these proceedings. Likewise, the dissent tries to distinguish *Lopez* based on the procedural posture of the preclearance proceedings in this matter. However, there was no preclearance in *Lopez* and there is no preclearance in this case. At the end of the day, no preclearance means no preclearance, and no enforceable plan. The dissent also fails to appreciate that the Court has drawn an independent redistricting plan without ruling on any of the various legal challenges, and it has considered the parties' legal challenges only for the purpose of

avoiding the same legal challenges to the court drawn map. *See Conner v. Waller*, 421 U.S. 657, 95 S.Ct. 2003 (1975)(the district court cannot decide the constitutional challenges to the challenged, unprecleared plan). The Court's Senate plan clearly rises above the myriad of challenges to the State's enacted plan and allows a free and fair election in 2012.

In conclusion, the State claims that it will be irreparably injured if a stay is not granted. However, the individuals who would suffer irreparable injury if the stay were granted are the citizens of Texas, by being deprived of the opportunity to vote in the upcoming election under the schedule currently in place.

SIGNED this 25th day of November, 2011.

/s/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 11/23/11
Document 89

ORDER

The court adopts PLAN S164 as the interim plan for the districts used to elect members in 2012 to the Texas Senate. A map showing the redrawn districts in PLAN S164 is attached to this Order as Exhibit A. The textual description in terms of census geography for PLAN S164 is attached as Exhibit B. The statistical data for PLAN S164 is attached as Exhibit C. This plan may be also viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gis1.tlc.state.tx.us/) under the category "Court-ordered interim plans." Additional data on the Court's interim plan can be found at the following website location maintained by the Texas Legislative Council under the "Announcements" banner: http://www.tlc.state.tx.us/redist/redist.htm.

This interim map is not a ruling on the merits of any claims asserted by the Plaintiffs in this case or the case pending before the three-judge panel in the United States District Court for the District of Columbia.

In drawing a Senate map, the court was faced with factual and legal concerns very different from those faced in regard to the Congressional and State House maps. Thus, the manner in which the State Senate map is drawn is quite different from the manner in which the Congressional and State House maps are drawn, and any comparison would be misleading and unfounded.

In drawing this map, all proposed maps, including the State's enacted map, were considered. The only objections raised to the State's enacted map in this litigation concerned Senate District 10, and no other portions of the map were objected to. Further, the Department of Justice has asserted no objection to the plan before the three-judge panel in the United States District Court for the District of Columbia. As a result, the Court concluded that the appropriate exercise of "equitable discretion in reconciling the requirements of the Constitution with the goals of state political policy,"[1] was to

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[1] *Connor v. Finch*, 431 U.S. 407, 414 (1977). Although *Connor* and other Supreme Court opinions require population equality in court-drawn maps, the Court notes that Plaintiffs have not raised an equal protection challenge to the population deviations in the Legislature's enacted map. Thus, insofar as the Court is utilizing the Legislature's enacted map, it is using the portions of the map to which no party or the DOJ has objected in order not to disturb legislative choices any more than necessary. This was not possible in the State House and

maintain the status quo from the benchmark plan with regard to Senate District 10 pending resolution of the litigation in the District of Columbia but otherwise to use the enacted map as much as possible.[2]

Though the State objects to the configuration of Senate District 10 and contends that there is no legal justification for the Court's configuration of that district because there is no legal wrong requiring a remedy, the Court notes that this is not a remedial map. The Court's configuration of Senate District 10 is not a merits determination on the challenges raised in this case or the case before the three-judge panel in the United States District Court for the District of Columbia. As this Court noted in its order denying summary judgment, the fact remains that the Legislature's enacted map has not been precleared by the three-judge panel in the United States District Court for the District of Columbia and thus may not be implemented, nor may this Court consider the merits of the challenges brought in this litigation.[3] Using the State's unprecleared map in its entirety would improperly bypass the preclearance proceedings in the United States District Court for the District of Columbia. Thus, the Court's map, as an interim map, simply

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Congressional maps, given the numerous challenges to the State's enacted House map and the mandate to achieve *de minimis* population deviation in the Congressional map.

[2] Five districts (9, 10, 12, 22, and 30) are different from the enacted map, but changes to districts 9, 12, 22, and 30 are the result of keeping district 10 the same as in the benchmark.

[3] *Lopez v. Monterey County*, 519 U.S. 9, 20 (1996).

maintains the status quo as to the challenged district pending resolution of the preclearance litigation, while giving effect to as much of the policy judgments in the Legislature's enacted map as possible.

SIGNED on behalf of the panel this 23rd day of November, 2011.

/s/
ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 11/17/11
Document 86

ORDER

The court may issue PLAN 163 as the interim plan for the districts used to elect members in 2012 to the Texas Senate. This plan may be viewed on the DistrictViewer website operated by the Texas Legislative Council (http://gisl.tic.state.tx.us/) under the category "Exhibits for Davis v. Perry."

The parties are ordered to access this proposed interim plan and file any comments and/or objections via CM/ECF to the proposed interim plans no later than noon, Friday, November 18 2011.

SIGNED on behalf of the panel this 17th day of November, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 09/22/11
Document 1

COMPLAINT

Plaintiffs, WENDY DAVIS, MARC VEASEY, ROY BROOKS, VICKY BARGAS, PAT PANGBURN, FRANCES DELEON, DOROTHY DEBOSE, and SARAH JOYNER ("Plaintiffs") allege:

1. Plaintiffs bring this action to enforce their voting rights guaranteed by the United States Constitution and federal law. As registered voters in the State of Texas, Plaintiffs have exercised, and wish to continue exercising, their right to vote for their preferred candidate to the Texas State Senate from Senate Districts 8, 10, 12 and 25, both in primary elections and general elections. As registered voters in the State of Texas, Plaintiffs have exercised, and wish to continue exercising their right to vote for their preferred candidate to the Texas State Senate from Senate Districts 8, 10, 12, and 25 both in primary elections and general

elections. As recently released census data demonstrate, however, population shifts during the last decade have now diluted Plaintiffs' voting strength and have rendered Texas' state senate districting plan unconstitutional under the rule of "one person, one vote."

2. Plaintiffs also bring this action to enforce their voting rights guaranteed by the Voting Rights Act of 1965, as amended, 42 U.S.C. §§1973 and 1973c. In May 2011, the State enacted a new state senate plan (Plan S148) but that plan has not and likely will not receive the requisite preclearance under Section 5 of the Voting Rights Act, 42 U.S.C §1973c. Even in the unlikely event that Plan S148 receives Section 5 preclearance, the state's proposed state senate redistricting plan cannot be administered because Plan S148 dilutes the voting strength of minority voters in the Dallas and Tarrant area of North Texas in violation of Section 2 of the Voting Rights Act, 42 U.S.C. §1973.

3. The State's proposed state senate plan was drawn with the purpose, and has the effect, of minimizing and reducing the voting strength of minority populations in the Tarrant and Dallas counties area of North Texas. The intentional fracturing and dismantling of the coalition of minority voters in Senate District 10 constitutes unlawful vote dilution and discrimination in violation of Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments to the United States Constitution.

PARTIES

4. Plaintiff WENDY DAVIS resides at 2737 Calder Court, in Fort Worth, Texas. Plaintiff MARC VEASEY resides at 8224 Longfellow, in Fort Worth, Texas. Plaintiff ROY BROOKS resides at 5032 Highland Meadow Drive in Fort Worth, Texas, VICKY BARGAS resides at 3301 East Drew Street in Fort Worth, Texas. Plaintiffs DAVIS, VEASEY, BROOKS and BARGAS are registered voters who live in Senate District 10.

5. Plaintiff PAT PANGBURN resides at 4620 Redwood Court in Irving, Texas. Plaintiffs PANGBURN is a registered voter who lives in Senate District 8.

6. Plaintiff FRANCES DELEON resides at 4521 Diaz Avenue in Fort Worth, Texas. Plaintiff DOROTHY DEBOSE resides at 5713 Humbert Avenue in Fort Worth, Texas. Plaintiffs DELEON and DEBOSE are registered voters who live in Senate District 12.

7. Plaintiff SARAH JOYNER resides at 9201 Brody Lane, #4302, in Austin, Texas 78748. Plaintiff JOYNER is a registered voter who lives in Senate District 25.

8. Defendants are Texas State officials who have duties under the laws of Texas to draw state senate boundaries in Texas following the release of population data from each federal decennial census and then to conduct elections under those districts. Governor Rick Perry is the Governor of Texas. Hope Andrade is the Secretary of State and oversees Texas' electoral process. Defendant BOYD RICHIE is the Chair of the Texas Democratic Party. Defendant STEVE MUNISTERI is Chair of the

Texas Republican Party. All Defendants are sued in their official capacities.

JURISDICTION AND VENUE

9. This case is brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1973c. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1343(a)(3), 1343(a)(4), 1357, 2201, 2202, 2284, and 42 U.S.C. §1973j(d). Venue is proper in this district under 28 U.S.C. 1391(b).

BASIS OF CLAIMS

10. The Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution prohibits any state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." This provision creates a guarantee of "one person, one vote" – requiring a state's senate districts to achieve population equality as nearly as is practicable.

11. On December 21, 2010, the Secretary of Commerce reported to the President of the United States the tabulation of population for each of the fifty states, including the State of Texas. Those population figures show Texas' total population to be 25,145,561. The ideal population for each of the 31 state senate districts using this figure is 811,147 (25,145,561 divided by 31).

12. The official 2010 federal decennial census figures for Texas show that population shifts during the last decade have generated substantial inequality among Texas' thirty one state senate districts, whose populations now range from a low of 641,007 (for State Senate District 16) to a high of 1,

015,027 (State Senate District 7). Thus, the total deviation is now 374,020 persons.

13. According to the 2010 federal decennial census figures for Texas, State Senate District 10 contains population from fast growing Tarrant County, and has significantly increased its population over the last decade and now contains 834,265 persons. These official census figures show that State Senate District 10 exceeds by 23,118 the ideal population figure of 811,147 for each state senate district in Texas. State Senate District 10 is overpopulated relative to other state senate districts in the State of Texas.

14. The existing malapportionment of state senate districts in Texas dilutes the voting strength of Plaintiffs DAVIS, VEASEY, BROOKS and BARGAS in overpopulated State Senate District 10, as the weight or value of plaintiffs DAVIS', VEASEY's and BROOKS' vote is less than that of other voters residing in underpopulated districts state senate districts.

15. State Senate District 8 contains population from fast growing Collin County as well as Dallas County, and has significantly increased its population over the last decade and now contains 940,963 persons. These official census figures show that state senate District 8 exceeds by 129,816 the ideal population figure of 811,147 for each state senate district in Texas. State Senate District 8 is overpopulated relative to other state senate districts in the State of Texas.

16. The existing malapportionment of state senate districts in Texas dilutes the voting strength

of Plaintiff PANGBURN in overpopulated State Senate District 8, as the weight or value of Plaintiff PANGBURN's vote is less than that of other voters residing in underpopulated districts state senate districts.

17. According to the 2010 federal decennial census figures for Texas, State senate District 12 contains population from fast growing Tarrant and Denton Counties, has significantly increased its population over the last decade and now contains 1,013,641 persons. These official census figures show that State Senate District 12 exceeds by 202,494 the ideal population figure of 811,147 for each state senate district in Texas. State Senate District 12 is overpopulated relative to other state senate districts in the State of Texas.

18. The existing malapportionment of state senate districts in Texas dilutes the voting strength of Plaintiffs DELEON and DEBOSE in overpopulated State Senate District 12, as the weight or value of plaintiffs DELEON's and DEBOSE's vote is less than that of other voters residing in underpopulated districts state senate districts.

19. According to the 2010 federal decennial census figures for Texas, State Senate District 25 contains population from the fast growing region of Bexar, Travis, Hays, Guadalupe, Kendall and Comal Counties, and has significantly increased its population over the last decade and now contains 984,664 persons. These official census figures show that State Senate District 25 exceeds by 173,517 the ideal population figure of 811,147 for each state

senate district in Texas. State Senate District 25 is overpopulated relative to other state senate districts in the State of Texas.

20. The existing malapportionment of state senate districts in Texas dilutes the voting strength of Plaintiff JOYNER in overpopulated State Senate District 25, as the weight or value of plaintiff JOYNER's vote is less than that of other voters residing in underpopulated districts state senate districts.

21. The Texas Legislature adopted a new state senate redistricting plan, Plan S148, on or about May 17, 2011. Defendant Governor Perry, however, did not sign the senate redistricting bill until June 17, 2011. State officials then delayed another month, until July 19, 2011, to submit the state senate redistricting plan to federal authorities under Section 5 of the Voting Rights Act, 42 U.S.C §1973c.

22. In addition to waiting more than 60 days to submit the legislatively-enacted state senate redistricting plan for Section 5 preclearance, State officials also submitted the new state senate plan to a three-judge district court in the District of Columbia for judicial preclearance, rather than choosing the speedier alternative of administratively submitting the plan to the United States Attorney General. On September 19, 2011, the United States Attorney General filed his Answer to the State's complaint in the D.C. preclearance lawsuit. In his answer, the United States Attorney General took the position that the proposed state senate redistricting plan met the requirements of Section 5 of the Voting Rights Act. Plaintiffs DAVIS and VEASEY, among

others including the NAACP and LULAC and the Texas Legislative Black Caucus, have intervened in the D.C. Court case and will vigorously oppose preclearance of the state senate map. A trial in that D.C. judicial preclearance case is not expected until November 2011, at the earliest.

23. A redistricting plan is not legally enforceable unless and until it receives the requisite preclearance under Section 5 of the Voting Rights Act of 1965, as amended. See 42 U.S.C. §1973c. It is unlikely that the State of Texas will have a legally enforceable state senate redistricting plan when candidate qualifying opens later this year because it does not meet the requirements of the Voting Rights Act. This Court's intervention is thus necessary to remedy the existing constitutional violation of Plaintiffs' rights and to protect their rights to cast an undiluted vote for the state senate.

CLAIM I

24. Plaintiffs reallege the facts set forth in paragraphs 1-23 above.

25. The facts alleged herein constitute a denial to the plaintiffs of the equal protection of the laws as guaranteed to them by the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM II

26. Plaintiffs reallege the facts set forth in paragraphs 1-23 above.

27. The facts alleged herein constitute an abridgement of the privileges and immunities of citizenship guaranteed to Plaintiffs by the Privileges

and Immunities Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM III

28. Plaintiffs reallege the facts set forth in paragraphs 1-23, above.

29. The State's proposed state senate redistricting plan cannot be administered because S148 has not been precleared pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.

CLAIM IV

30. Plaintiffs reallege the facts set forth in paragraphs 1-23, above.

31. The State's proposed state senate plan violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by minimizing and diluting the opportunities for African-American and Hispanic voters to participate in the political process, and to elect a candidate of their choice to the Texas Senate.

32. When Senate District 10 was drawn in the 2001 redistricting cycle, it was 56.6 percent Anglo, 16.7 percent African American and 22.9 percent Hispanic. In its 2001 Section 5 submission to the Department of Justice for Voting Rights Act preclearance, State of Texas acknowledged that the minority population in District 10 was growing and justified its configuration of the district by stating:

> District 10 contain[s] significant minority communities that are essentially kept intact within [the] district. The voting strength of

> these minority communities in the future will depend on the cohesion within and between Black and Hispanic voters and the ability of such voters to form coalitions with other racial or ethnic groups in support of their preferred candidates. (State of Texas Section 5 Preclearance submission, August 2001).

33. DOJ precleared the senate map referenced in paragraph 21, above, in 2001. Throughout the last decade, the minority population in the DFW metroplex in general and in Senate District 10 in particular, grew dramatically while the Anglo population significantly shrunk as a percentage of the district. For example, between 2000 and 2010, the total Anglo population in Dallas and Tarrant counties decreased by more than 156,000, whereas the Latino population in that two county area grew by more than 440,000 and the black population in that area grew by more than 152,000. By the end of the decade, Senate District 10's minority population had increased by 9 percent and its Anglo population percentage had fallen by 9 percent. By the time of the 2010 census, Anglos no longer comprised a majority of Senate District 10's total population.

34. Minority voters in Senate District 10 realized the potential predicted by the State's 2001 DOJ preclearance submission in 2008 when they elected their preferred candidate of choice to the State Senate, Wendy Davis. Minority leaders in Tarrant County were leaders in the coalition that recruited and supported Wendy Davis in her 2008 campaign in Senate District 10.

35. In the 2008 election, African-American and Hispanic voters in Senate District 10 united and voted cohesively to provide overwhelming support to candidate Wendy Davis and she was elected to office.

36. In electing their candidate of choice to the state senate in 2008, African-American and Hispanic voters in Senate District 10 overcame the opposing bloc vote of Anglos who voted against the candidate of choice of minority voters.

37. Plan S148 dramatically changes the demographic makeup of Senate District 10. The State's plan adds 58,846 Anglos to the District while removing 61,562 African Americans and Hispanics. This raises the Anglo percentage to 54.4 percent (from the benchmark of 47.6 percent). The State's plan also lowers the African American voting age population from 17.9 percent to 13.4 percent and lowers the Hispanic voting age population from 24.8 percent to 22.1 percent.

38. Plan S148 destroys the coalition of minority voters who elected their preferred candidate of choice in Senate District 10 in 2008, which is majority-minority in total population (52.4% combined Hispanic, Black and Other) according to the 2010 census. The State's proposed state senate plan both lowers the minority percentage and eliminates minority voters' ability to elect their candidate of choice and their ability to participate effectively in the political process.

39. The State's proposed state senate plan was drawn to insure that population gains in minority communities from 2000 to 2010 in the Dallas-

Tarrant counties region of North Texas were not reflected in the proposed state senate plan.

40. The reconfiguration of Senate District 10 in the 2011 state senate redistricting plan was not free of a racially discriminatory purpose and harms plaintiffs' rights. The redrawing of Senate District 10 was a cynical and intentional cleaving of an effective concentration of minority voter neighborhoods into disparate pieces that will now have no political impact on any of the districts they are placed within. State legislative leaders knew Senate District 10 was majority minority in population at the time of redistricting, they acknowledged that Senator Davis was the minority voters' candidate of choice in 2008 when minority voters elected her, and they were warned that dismantling Senate District 10 would harm minority voting rights. In the face of this evidence, they intentionally eliminated Senate District 10 as a minority opportunity district.

41. The State's proposed state senate plan was drawn with the purpose, and has the effect, of minimizing and reducing the voting strength of minority populations in the Tarrant and Dallas counties area of North Texas. The fracturing and dismantling of Senate District 10 harms plaintiffs herein and constitutes unlawful vote dilution and discrimination in violation of Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments to the United States Constitution.

42. The minority population in the Dallas-Tarrant County area of North Texas (Black, Hispanic, and Other) is sufficiently large and geographically compact to comprise the majority of

citizen voting age persons in at least two state senate districts. Dallas and Tarrant Counties contain over 2.1 million African American and Hispanic residents. Since the 2000 census, the Anglo population in the two counties combined has decreased while the both African American and Hispanic populations have increased. Yet, under the State's plan, the entire north Texas region contains only one district SD23 that allows minority citizens the opportunity to elect their candidate of choice.

43. Minority voters in Tarrant and Dallas Counties are sufficiently politically cohesive that they can elect two candidates of choice to the state senate in the Dallas and Tarrant counties region of North Texas.

44. Anglos vote sufficiently as a bloc to enable them usually to defeat the minority voters' preferred candidates in Texas, including the areas in which two majority-minority, citizen voting age population state senate districts can be drawn.

45. In addition to being malapportioned, the current and proposed Texas state senate redistricting plans operate to dilute the voting strength of minority voters in the Dallas and Tarrant area of North Texas in violation of Section 2 of the Voting Rights Act, 42 U.S.C. §1973.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this action and immediately convene a three-judge district court pursuant to 28 U.S.C. §2284;

2. Issue a declaratory judgment, that the existing state senate districting plan presently in effect in Texas violates Plaintiffs' rights under the aforesaid provisions of the United States Constitution and federal law;

3. Issue a declaratory judgment finding that the current Texas state senate redistricting plans are malapportioned, in violation of the Fourteenth Amendment to the United States Constitution;

4. In the unlikely event that Section 5 preclearance is obtained, issue a declaratory judgment finding that the 2011 proposed state senate redistricting plan illegally dilutes the voting rights of minority voters (African Americans and Latinos) in the Dallas and Tarrant counties region of North Texas in violation of Section 2 of the Voting Rights Act, 42 U.S.C. §1973;

5. In the unlikely event that Section 5 preclearance is obtained, issue a declaratory judgment finding that the 2011 proposed state senate redistricting plan was enacted with a racially discriminatory purpose in violation of Section 2 of the Voting Rights Act, 42 U.S.C. §1973, and the Fourteenth and Fifteenth Amendments to the United States Constitution;

6. Enjoin permanently the Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the proposed state senate plan S148 because that plan that has not received the requisite preclearance approval under Section 5 of the Voting Rights Act;

7. Enjoin permanently the Defendants, their officers, agents, employees attorneys, successors in office, and all persons acting in concert or participation with them, from conducting primary, general or special elections using the existing state senate districting plan, or any other state senate plan that violates the United States Constitution and federal law;

8. Order into effect a new state senate redistricting plan that meets the requirements of the United States Constitution and federal and state law;

9. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case;

10. Issue an order requiring Defendants to pay Plaintiffs' costs, litigation expenses and reasonable attorneys' fees incurred in the prosecution of this action; and

11. Grant such other and further relief as it deems is proper and just.

Respectfully submitted,
/s/ David Richards
DAVID RICHARDS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 10/07/11
Document 17

DEFENDANTS' ADVISORY REGARDING INTERIM APPORTIONMENT

Defendants Rick Perry, in his official capacity as Governor and Hope Andrade, in her official capacity as Secretary of State (collectively, "Defendants") respectfully file this Advisory in response to the Court's Amended Order of October 4, 2011.

As a prefatory matter, the Defendants recognize, as the Court does, that "preclearance is not a function of this Court," but respectfully take issue with the Court's suggestion that promptly filing a declaratory judgment proceeding before the United States District Court for the District of Columbia (instead of administratively before the Department of Justice), was, somehow, a less streamlined and efficient method for seeking preclearance. The Department of Justice took the full sixty days to answer in the D.C. proceeding; the Defendants are

pleased, but not surprised, that Attorney General Holder found no basis to object to the Senate Plan. The Department has, however, refused to convert the unofficial filing into an official one (which would be entitled to preclearance), given the objection and intervention of Senator Davis and others in the D.C. proceeding. The D.C. court has precleared the State Board of Education map, and would have likewise done so for the Senate, but for the presence of Senate-map intervenors.[1] Thus, put simply, were it not for the *Plaintiffs* in this action, this Court could immediately address the putative merits of the Plaintiffs' claim.

Moreover, the Defendants were, in fact, expeditious in their filing of a joint action before the D.C. court. Having just observed the Justice Department interpose vague, unsupported objections to the House and Congressional plans in its sixtieth-day Answer before the D.C. District Court (which court orders have since *twice* required it to supplement for clarity), the State of Texas obviously chose the ***fastest*** route to preclearance. Indeed, from both its pleadings and its arguments before that court, the Justice Department appears to have determined to use the proceeding as a test case for novel – and previously-rejected – legal theories.

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[1] As far as Defendants are aware, this is a unique situation; they know of no precedent in which intervenors have been permitted to proceed on Section 5 objections to a *different* plan than one to which the United States has objected, in an instance in which the U.S. Attorney General has no objections to the plan at issue. The statutory and Eleventh Amendment issues raised by the question are, as yet, neither fully briefed nor currently before, the D.C. District Court.

In any event, the Section 5 three-judge panel has already set a hearing on the State's motion for summary judgment as to all maps, including the Senate plan. The D.C. court has made clear that its focus, like this Court's, is on expedient resolution of the matters before it, so that the election process may proceed apace.

This Court has requested that the parties advise it regarding the appropriate action to take should it be required to implement an interim apportionment plan. While certain plaintiffs cited the Court to the multimember redistricting cases of *Chapman v. Meier*, 420 U.S. 1 (1975), and *McDaniel v. Sanchez*, 452 U.S. 130 (1981), they unfortunately omitted the controlling case – and the Supreme Court decision most closely on point to the facts at bar – *Upham v. Seamon*, 456 U.S. 37 (1982).[2] There, in a matter involving the 1981 Texas congressional plan, the Court rejected the notion that a district court may ignore the political decisions embodied in a legislative map that has not yet garnered preclearance. (The situation there was slightly different from the present one, in that the actual determination of preclearance will be made, in the first instance, by the D.C. District Court). The *Upham* three-judge panel had altered the two districts based on which preclearance had been denied, but also fixed a problem it perceived in the Dallas County apportionment. This was error, as it greatly exceeded the authority of a court already apprised of the legislative intent of the map-drawers.

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[2] Indeed, the Supreme Court severely limited the scope of *McDaniel* a dozen years ago in *Lopez v. Monterey County*, 525 U.S. 266, 287 (1999).

"In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'" *Id.* at 41-42 (citing *White v. Weiser*, 412 U.S. 783, 795 (1973)). In its brief opinion, the *Upham* Court examined the preceding decade's opinions on related subjects, and distilled a three-judge panel's interim map methodology into a single paragraph:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the Dallas County reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas Legislature.

456 U.S. at 43 (citing *Connor v. Finch*, 431 U.S. 407, 414 (1977)).

The Supreme Court then noted that it had previously permitted district courts to order elections to go forward based on interim, apportionment maps that had legal, and "even constitutional" infirmities, and remanded so that the

district court could determine the best remedy. *Id.* at 44 (citing *Bullock v. Weiser*, 404 U.S. 1065 (1972); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970)).

Bullock and *Whitcomb* provide a window into the propriety of using the legislatively adopted plan, on an interim basis, until a final plan is implemented. In *Whitcomb*, the district court essentially enjoined conduct of any elections for Indiana State Senate or State Representative, and instead directed use of a map that it had approved. The Supreme Court stayed enforcement of the order, thus allowing elections based on the map the district court determined was unconstitutional, and upon which probable Court jurisdiction had already been noted. *Whitcomb v. Chavis*, 307 F. Supp. 1364 (S.D. Ind. 1969), *jurisdiction noted*, 397 U.S. 984, *stayed*, 396 U.S. 1055 (1970), *rev'd and remanded*, 403 U.S. 124, 140 (1971). Indeed, notwithstanding the district court's correct finding of unconstitutionality, it "erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so." 403 U.S. at 161.

The other case *Upham* cited favorably, *Bullock v. Weiser*, resulted in the 1972 Texas congressional elections being held pursuant to a plan that the Northern District of Texas had held to be unconstitutional. Once more, the Supreme Court stayed an injunction against the election, and once more, the Court eventually agreed with the district court that the plan *was* unconstitutional, but that its remedy was patently at odds with lawful, legislative state goals. *White v. Weiser*, 412 U.S. 783, 789, 797 (1973).

The compressed time often associated with redistricting, as well as the state-law limitations in convening legislatures, led *Upham* to note that "[n]ecessity has been the motivating factor in these situations." Applying that principle, the *Upham* Court afforded the Eastern District of Texas the odd choice (based on its local expertise) of once more redrawing the plans, or of letting the elections go forward as planned, on the then-current maps. Needless to say, it did so in spite of the reversible error the Court had just adjudicated regarding those maps. 456 U.S. at 44.

The manner in which the Eastern District of Texas approached the "unwelcome obligation" of an interim solution to the 2001 Texas Senate and congressional maps in *Balderas v. State*, is extremely instructive. 2001 WL 34104833 & 34104836 (E.D. Tex.). There, the court had already held a Section 2 trial, much as this Court did, with -- as here -- the initial response from the United States coming the business day following the close of trial.[3] (There, it was an administrative preclearance of the Senate plan, but a denial of preclearance of the congressional map. Here, similarly, the United States has interposed no objection to the Senate plan in its Answer -- although Section 5 intervenors have -- but has objected to certain congressional districts, which it claims indicate either discriminatory purpose or retrogressive effect.) While the *Balderas* maps were drawn by the Legislative Redistricting

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[3] Significantly, the *Balderas* trial did not begin until mid-November, 2001, and the Section 5 administrative preclearance determination was not rendered until November 16. This Court finds itself far ahead of that time sequence.

Board of Texas, rather than by the Legislature, they were properly treated as legislative acts by the court.

The *Balderas* district court explained that it was required by *Upham* to limit its decision "to correcting the federal constitutional and statutory defects in the LRB House plan, including the concerns raised in the objection of the Justice Department." For purposes of the present action, the standard is the same, except that the dispositive determination regarding Section 5 preclearance will have been rendered by the D.C. District Court rather than the Justice Department, by the time this Court undertakes its reapportionment analysis. If, as the Defendants expect, the three-judge panel grants the State relief, the maps will have been precleared and only the remaining Section 2 issues, if any, will require redress. If not, then the Court will need to address the court's objections, but will be "limited to those necessary to cure any constitutional or statutory defect." *Balderas* (citing *Upham*, 456 U.S. at 43).

Applying that standard, the Eastern District of Texas implemented its changes by making discrete changes to the districts identified by the Justice Department in its preclearance objections, and leaving the rest of the map (save for districts slightly affected by bordering on the objected-to districts) alone. In *Martinez v. Bush*, the Southern District of Florida did precisely the same thing, adopting a proposed remedial map which had as few changes as possible. 234 F. Supp. 2d 1275, 1288 n.12 (S.D. Fl. 2002).

Other courts have addressed the exigency of interim relief in various ways. The Southern District of Georgia, in a three-judge decision related to *Miller v. Johnson*, 500 U.S. 900 (1995), issued a brief Order Granting Preliminary Injunction and Releasing Interim Redistricting Plan, so that elections could go forward, and followed it with a longer Order and Opinion about a month later. The court only addressed in its injunctive order the interim map, and, in it, effected changes only to districts that were conceded to be unconstitutional, or, as it explained in the Opinion, for which "Plaintiffs have made a showing of a substantial likelihood of prevailing on the merits of their claim that those districts are unconstitutional." *Johnson v. Miller*, 929 F. Supp. 1529, 1542 n.33 (S.D. Ga. 1996) (citation omitted); Order, No. CV-194-40, dated April 30, 1996 (S.D. Ga.)(available at http://georgiainfo.galileo.usg.edu /ga-96dis.htm).

In *Smith v. Clark*, a three-judge panel, recognizing that *no* input had been received from the Department of Justice (rather, additional information had been requested, in a manner that would have pushed the congressional elections past their announced dates), drew its own map on an interim basis. The court expressly afforded no deference to legislative intent on the facts before it. Judge Jolly explained,

> The principle announced in *Upham* and *White*, and applied in *Terrazas* and *Burton*, does not apply in this case. This is true because, as of this date, no part of the plan adopted by the Chancery Court has been approved by the Attorney General. We think

> that, for purposes of deference, it is important to note that the plan adopted by the Chancery Court was drafted by the Intervenors (plaintiffs in Chancery Court), not by the Chancery Court, and not by the Mississippi Legislature, which failed to enact a congressional redistricting plan. Accordingly, there is no expression, certainly no clear expression, of state policy on congressional redistricting to which we must defer.

Smith v. Clark, 189 F. Supp. 2d 529, 533-34 (S.D. Miss. 2002)(citing *Terrazas v. Clements,* 537 F. Supp. 514 (N.D. Tex. 1982); *Burton v. Hobbie,* 543 F. Supp. 235 (M.D. Ala.), *aff'd,* 459 U.S. 961 (1982); *Burton v. Hobbie,* 561 F. Supp. 1029, 1034 (M.D. Ala. 1983)), *aff'd sub nom. Branch v. Smith,* 538 U.S. 254 (2003)). Here, of course, the Legislature *has* spoken, and so has the Department of Justice, as a litigant, has formally said it has ***no*** objection to the Senate plan, as pleaded in its Answer of September 19, 2011 in the Section 5 proceeding.

To the extent there is a difference between interim and remedial map-drawing, *Upham* identified it. Absent a patent one-person, one-vote failing or other manifest constitutional error, this Court is wholly permitted to use the legislature's lawfully-enacted map as its interim plan, unless the Section 5 three-judge panel expressly denies preclearance of the map. Given that the United States has affirmatively stated it has no Section 5 objection to the Senate plan (and, thus, the State's strong likelihood of success in that proceeding, this

Court would be well served by using the legislatively-enacted map as its interim.

Finally, to the extent the Court determines a need to generate interim plans, the experience of the State of Texas, based in no small part on the acknowledged expertise of the Texas Legislative Council and its RedAppl software, is that the actual process for adjudicating interim relief regarding a single Senate district would require less than a day, including testimony of the parties. Indeed, the parties to this action are in agreement that the substantive *trial* of this matter can be conducted in less than two court days, given the expansive record already generated, and the parties' agreement to use of materials from it in this case. In any event, because only a single district is at issue, the Court can reasonably expect that the entire process could be done in very little time.

The State Defendants remain confident that the Section 5 proceeding will conclude well prior to the dates by which finalized maps will be necessary for implementation, and will continue to keep the Court apprised of the status of that litigation.

Dated: October 7, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 11/18/11
Document 88

DEFENDANTS' OBJECTIONS TO THE COURT'S PROPOSED INTERIM SENATE PLANS

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, "Defendants") respectfully file these objections in response to the Court's Order of November 17, 2011 (Doc. 86). In support, Defendants state as follows:

The Court has erred in its attempt to impose equipopulous districts in the Texas Senate. Whether because of a mistaken policy belief that population equalization is an inherent necessity in the plan, or because of a supposed legal constraint that would require it to ignore the lawful deviations utilized by the Legislature in devising its plan, the Court exceeded its authority.

A federal court lacks constitutional authority to interfere with the expressed will of the state legislature unless it is compelled to remedy a specific, identifiable violation of law. Contrary to this basic principle of federalism, the proposed interim Senate redistricting plan— while it is in many ways based roughly on the legislatively enacted plan—in other ways completely overturns the legislative will where no probability of a legal wrong has been identified. By imposing remedies where no wrongs exist, the Court has exceeded its authority and intruded on the Legislature's constitutional prerogative to make the considered policy judgments necessary to formulate a redistricting plan.

Because federal courts possess neither the constitutional power nor the political authority to make the policy choices essential to redistricting, they cannot disregard the legislature's intention in an enacted redistricting plan unless it is necessary to avoid a constitutional or statutory violation:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." . . .
>
> An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either the

> Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham v. Seamon, 456 U.S. 37, 43 (1982) (per curiam) (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)); *cf. White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the district court erred because "in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan"). When a federal court is forced to order an interim redistricting plan, it must respect the state legislature's policy judgments.

The Court's proposed Senate plan, Plan S163, disregards the Texas Legislature's will by modifying all but three Senate districts for no apparent reason other than to reduce the difference in total population among districts. There is no legal justification for such drastic changes to nearly all the Senate districts when the Department of Justice has not objected to Plan S148 and Plaintiffs' only challenge relates to Senate District 10. The Court's changes are not within its power because the legislatively drawn districts do not violate federal law. The Supreme Court has concluded that a total deviation of less than 10% is consistent with the principle of one person, one-vote. The Supreme Court's decision reflects the need for courts to defer to the political judgments that are necessary to enact a plan. *Brown v. Thomson*, 462 U.S. 835, 842 (1983). Not only are these changes beyond the Court's power, they also mark a clear break from the consistent practice of previous courts in Texas

redistricting cases.[1] Although courts are generally subject to a stricter standard than state legislatures in drawing electoral districts,

> [t]his stricter standard applies . . . only to remedies required by the nature and scope of the violation . . . . There may be reasons for rejecting other parts of the State's proposal, but those reasons must be something other than the limits on the court's remedial actions. Those limits do not come into play until and unless a remedy is required; whether a remedy is required must be determined on the basis of the substantive legal standards applicable to the State's submission.

Upham, 456 U.S. at 42–43 (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971)) (internal citation and footnote omitted); *see also Connor v. Finch*, 431

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[1] *See Balderas v. Texas*, 2001 WL 34104833 (E.D. Tex. Nov. 28, 2001) (incorporating the majority of the unprecleared LRB House plan into a court-drawn redistricting plan, including deviations in large urban counties with multiple whole districts); *Terrazas v. Clements*, 537 F. Supp. 514, 546–47 (N.D. Tex. 1982) (rejecting the argument that the court was required to eliminate population deviations when incorporating districts from an unprecleared LRB redistricting plan); *accord Johnson v. Miller*, 929 F. Supp. 1529, 1563 (S.D. Ga. 1996) ("It does not violate the one-person one-vote principle for us to use in an interim remedy plan districts from a legislatively enacted plan that does not itself violate that principle."); *cf. Burton v. Hobbie*, 543 F. Supp. 235, 239 (M.D. Ala.), *aff'd*, 459 U.S. 961 (1982) (implementing an unprecleared state legislative plan on an interim basis, with limited modifications in response to DOJ objections, relying on *White v. Weiser*, *Upham v. Seamon*, and *Terrazas v. Clements*).

U.S. 407, 415 (1977) (noting that plans drawn to remedy the legislature's failure to redistrict are subject to stricter standards because courts "possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name").

The Court's apparent attempt to minimize—but not equalize—population across districts creates the very entanglement that the Supreme Court has warned against since the beginning of its involvement in reapportionment. The Court long ago cautioned that reducing constitutional population deviations in state legislative plans results in excessive interference with the legislative process with minimal constitutional returns:

> Involvements like this must end at some point, but that point constantly recedes if those who litigate need only produce a plan that is marginally 'better' when measured against a rigid and unyielding population-equality standard. . . .
>
> The point is, that such involvements should never begin. We have repeatedly recognized that state reapportionment is the task of local legislatures or of those organs of state government selected to perform it. Their work should not be invalidated under the Equal Protection Clause when only minor population variations among districts are proved.

Gaffney v. Cummings, 412 U.S. 735, 750–51 (1973).

Plan S163 further rejects the Legislature's carefully considered judgments by breaking up communities of interest in the map. *See, e.g.*, Exhibit 1 at 3 (letter from Senator Jane Nelson identifying how the Court's plan divides communities of interest); 4 (letter from Senator Robert Nichols identifying how the Court's plan divides communities of interest and ignores public input); 6 (letter from Senator Glenn Hager objecting to the Court's plan because it divides communities of interest); 10-11 (letter from Senator Chuy Hinojosa objecting to the Court's plan because it divides communities of interest). For example, Plan S148 as passed by the Legislature ensured that the City of Arlington was contained in a single district. *See* Exhibit 1 at 8 (letter from Senator Chris Harris), 13-12 (email from Representative Rodney Anderson's office). As the seventh largest city in Texas with a population of approximately 400,000, the City of Arlington qualifies as a major community of interest. *See id.* Plan S148 keeps the majority of the City of Arlington within Senate District 9. *See id.* Ignoring this policy judgment considered by the Legislature, the Court's plan reverses that correction and continues to split the City of Arlington. *See id.*

The Court's decision to change the configuration of Senate District 10 is also not justified by the need to remedy a legal harm. In the benchmark plan, Senate District 10 is best defined as a crossover district given that it is comprised of a majority Anglo population and a combination of the African-American and Latino populations forms less than a majority of the citizen voting age population. *See* Plan S100, Red 106 (District 10 has 15.1% Hispanic

CVAP, 18.3% Black CVAP, and 62.7% Anglo CVAP). The Court's plan maintains the crossover nature of Senate District 10. *See* Plan S163, Red 106 (District 10 has 15.2% Hispanic CVAP, 18.1 Black CVAP, and 62.8% Anglo CVAP). It is well-established that the Voting Rights Act does not require the State—or permit the Court—to create crossover districts or, more importantly, maintain such districts absent a demonstration of intentional racial discrimination under the Fourteenth Amendment. *See Bartlett v. Strickland*, 129 S.Ct. 1231, 1246 (2009). Neither Plaintiffs nor the Court have identified any plausible justification for maintaining Senate District 10 as it existed in the benchmark plan.

Nevertheless, while Defendants disagree that any changes to Senate District 10 were necessary to remedy a legal harm, they agree with the Court's refusal to redraw Senate District 10 as requested by Plaintiffs. Indeed, by returning Senate 10 to its prior configuration, the Court rejects Plaintiffs' efforts to transform this district into a "performing" minority coalition district.

Finally, Defendants object to the Court's plan because it appears that it fails to adhere to the traditional redistricting principle of creating contiguous districts. In San Antonio, a few blocks along Loop 410 are enclosed by Senate District 26, but they are assigned to Senate District 25. *See* Exhibit 2.

CONCLUSION

Defendants object to the Court's plan because it exceeds the Court's authority to the extent it attempts to equalize population among the districts

denying the Legislature the presumption of good faith and legality to which it is entitled.

Dated: November 18, 2011

Respectfully Submitted,

GREG ABBOTT
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Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.

On Appeal from the United States District Court for the Western District of Texas

JOINT APPENDIX, Vol. 3 of 5

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Excerpts from the 2001 Texas Preclearance Submission

Legislative Redistricting Board Of Texas

Voting Rights Act Considerations of the Plans Adopted July 25, 2001 to Redistrict the Texas House of Representatives and the Texas Senate

Submitted in Response to 28 C.F.R. Part 51, Section 51.27 (m) and (n)

August 15, 2001

The reapportionment plans adopted by the LRB for election districts in the House of Representatives and Senate of Texas are in compliance with all applicable state and federal laws and were not enacted for the purpose or with the effect of denying or abridging the right to vote in violation of Section 5 of the Voting Rights Act.

III.

The Reapportionment Process

The Legislature of the State of Texas convened in regular session on January 9, 2001. The Legislature adjourned on May 27, 2001 without enacting any legislation apportioning state house of representatives or senate districts. Pursuant to Article III, Section 28 of the Texas Constitution, the Legislative Redistricting Board convened on June 6, 2001.[2] At this first organizational meeting, the

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[2] The members of the Legislative Redistricting Board in 2001 are Lieutenant Governor Bill Ratliff, Speaker of the House of Representatives Pete Laney, Attorney General John Cornyn, Comptroller of Public Accounts Carole Keeton Rylander, and Commissioner of the General Land Office David Dewhurst.

members of the LRB elected Attorney General John Cornyn as chairman. The Board conducted the following meetings and hearings:

June 6th	Organizational Meeting
June 18th	Public Hearing
June 26th	Public Hearing for Members of the Legislature
July 10th	Initial Proposed Plans Presented by LRB Members
July 16th	Public Hearing on Proposed Plans
July 24th	Public Hearing on Proposed Amendments and Adoption of Reapportionment Plans

Court reporter transcripts for each meeting and hearing are included within the submission.

Proper notice for all meetings and hearings was provided in compliance with state law. In addition, notice of public hearings was specially mailed to over 700 individuals or groups that had testified previously during legislative hearings on redistricting or testified at the LRB public hearings. Copies of relevant public notices are included within the submission. Information regarding the LRB and its proceedings was available on the Board's website **www.lrb.state.tx.us.** The LRB and its members could be contacted directly through this website.

All proposed plans and amendments proposed to those plans were posted on the Texas Legislative Council's Red Viewer website immediately after being developed and were readily available to interested persons and groups. The RedViewer was linked to the LRB website. In addition, maps of and

demographic data for the primary proposed plans were available at the LRB meetings and hearings. A total of 186 witnesses testified before the LRB, including 23 on July 241h before the LRB Plans were adopted. Additional information regarding the opportunity for public input to the redistricting process is included within the submission itself.

* * *

This result reflects a lack of partisan cohesion among Hispanic voters and is an unlikely basis upon which to consider either District 3 8 or District 41 to be violative of the Voting Rights Act.[59]

Three Hispanic incumbents are paired in South Texas as a result of districts drawn in the LRB House Plan. No adverse effect is expected on the ability of Hispanic voters to elect a candidate of their choice. Two Hispanic incumbents who reside in adjacent election precincts within the City of McAllen in Hidalgo County are paired in District 41.[60] Adjacent District 40 has no incumbent. District 40 has 91.5% Hispanic V AP. All state representative districts within Hidalgo County are overwhelmingly Hispanic and provide an opportunity for Hispanic voters to elect the person of their choice. Further north, Representative Salinas from Duval County is paired in District 35 with Anglo Democrat incumbent Hawley from San Patricio County. The District is 52.1 % Hispanic VAP

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[59] *See Salas v. Southwest Texas Junior College*, 964 F.2d 1542 (1992); *Monroe v. City of Woodville*, 881 F.2d 1327 (5'" Cir. 1989), modified on rehearing, 897 F. 2d 763 (5'h Cir.), cert denied, 111 S.Ct. 71 (1990).

[60] As indicated above, District 41 is 69.6% Hispanic VAP.

(50.2% spanish surname registered voters) and should afford Hispanic voters the opportunity to elect a candidate of choice.

Five seats in the Texas House of Representatives were apportioned to El Paso County in 1991.[61] The county remains entitled to five seats according to the 2000 federal census. The LRB House Plan apportions five districts to El Paso County.[62] The districts in the LRB House Plan are the districts agreed upon by the members of the El Paso County delegation in the house of representatives. The racial and ethnic make-up of the districts in the LRB House Plan remains essentially unchanged from the existing districts. Districts 75, 76, 77 and 79 remain overwhelmingly Hispanic. Existing District 78 is only 45.43% Hispanic YAP. In the LRB House Plan, District 78 is increased to 53.21% Hispanic V AP.

Texas Senate Districts

A. Criteria For Apportioning the Senate

At its organizational meeting on June 6, 2001, the LRB adopted criteria for use by LRB members in developing plans for reapportioning the 31 districts of the Texas Senate. These written criteria are attached as Appendix B to this narrative.

The LRB Senate Plan as enacted[63] is based on whole voting tabulation districts (VTDs) as

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[61] Districts 75- 79. *See* Appendix D.

[62] Districts 75 - 79. *See* Appendix E.

[63] The official designation of the adopted plan by the Texas Legislative Council is Plan 1188S. For purposes of this

representing the county election precincts of this state. Only seven VTDs are split statewide by the adopted plan.

The LRB recognized the preservation of the core of existing districts and member-constituent relations as legitimate concerns. However, the adopted LRB plan places less emphasis on avoidance of the pairing of incumbents than on fairly drawn districts that recognize communities of interest and other valid redistricting criteria. Two incumbents are paired in District 16. One senate district (District 2) is without an incumbent. Another senate district (District 30) currently is vacant after the recent death of the office-holder.

The LRB plan contains fairly designed districts based on objective criteria, such as election precincts, city limit boundaries, county boundaries

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narrative, the adopted plan will be referred to herein as the LRB Senate Plan. Opponents of the LRB Senate Plan are likely to urge that the basic Plan (1165S) under consideration on July 24th was amended substantially before final adoption. There were two amendments adopted. One (1179S) was described by Attorney General Cornyn as a "legally superior" drawing of senate districts in Tarrant County from those present in Plan 1145S. The Cornyn amendment changed districts in Tarrant County to avoid fragmenting the significant insular minority community in that County. The other amendment (1185S) was offered by LRB member Rylander to change districts in South and West Texas. This amendment earlier had been part of Rylander's statewide plan that had been posted on the LRB website. The change in South Texas was in direct response to testimony from residents of Hidalgo County urging creation of a senate district that included most of Hidalgo County in it. None of the changes in Ms. Rylander's amendment has any adverse effect on Hispanic voting strength in the affected districts.

and, where appropriate, city and natural boundaries, such as rivers. As a result, the LRB Senate Plan splits only 14 counties compared to 33 counties split in the existing plan. Generally the districts in the LRB Senate Plan are regular and compact in shape. An exception is District 17, which stretches from Harris County along the coast to Jefferson County. District 17 is not based on racial considerations and has no significant effect on minority voters.

B. The Anticipated Effect Statewide

The relevant demographics for the Texas Senate districts in the LRB Senate Plan are attached as Appendix H (Existing Districts) and Appendix I (LRB Plan). More complete data is included within the submission.

The adopted plan for reapportioning the Texas Senate has a total maximum population deviation of 9.71 %. By comparison, the existing senate districts now have a population deviation of 43.50% according to the 2000 census.

On a statewide basis the LRB Senate Plan avoids retrogression of minority voting rights in violation of Section 5 of the Voting Rights Act. Based on state senate districts with predominately Black or Hispanic VAP, the Plan shows the following:

	Existing	LRB House Plan
Districts with 50% or greater Hispanic VAP	7	7
Districts with 40% greater Black VAP	2	2 (Including one or with 39.9% Black VAP)

Neither Hispanic voting strength nor Black voting strength is reduced statewide.

As with existing minority house districts, all existing predominately Black or Hispanic senate districts within the urban counties are significantly underpopulated according to the 2000 census.[64] To equalize population and avoid retrogression in these districts, minority population must be drawn from nearby districts.

Moreover, increased dispersion of Black and Hispanic inhabitants within the state and within counties of the state further complicates the process of drawing districts that have a majority of Black or Hispanic voters. Insufficient Black VAP exists within Dallas County to create a majority Black VAP senate district, therefore, although Senate District 23 contains essentially all of the insular Black community in Dallas County, it ends up with only 39.9% Black VAP. The very low spanish surname registered voter percentages in Dallas and Harris Counties also affect both the ability to maintain the existing Hispanic majority district in Harris County and to create any other majority Hispanic citizen VAP district elsewhere in the urban areas of the state.

Nevertheless, the LRB Senate Plan contains fairly designed districts that avoid retrogression while also resulting in approximately proportionate representation for Black and Hispanic citizen population.

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[64] The predominately Black Districts are District 13 (-10.64%) and District 23 (-12.21%). The majority Hispanic district in Harris County is District 6 (-14.27%). *See* Appendix H.

The LRB Senate Plan also generally avoids unnecessarily fragmenting significant Black or Hispanic insular communities even when such communities are not large enough to constitute a voting majority of a senate district. As a result, at least Districts 14, 15, 9 and 10 contain significant minority communities that essentially are kept intact within these districts. The voting strength of these minority communities in the future will depend on the cohesion within and between Black and Hispanic voters and the ability of such voters to form coalitions with other racial or ethnic groups in support of their preferred candidates.

Effect on Black Citizens. The LRB Senate Plan fairly designs senate districts such that the existing predominately Black districts are maintained in Dallas County and Harris County despite the significant underpopulation of the existing districts. The effect of the LRB Senate Plan is to avoid retrogression while also resulting in approximately proportionate representation for Black citizens on a regional and statewide basis. For example, Dallas County is entitled to 3.3 senate districts based on a total population of 2,218,899 inhabitants and an ideal senate district population of 672,639 persons. One of those 3.3 districts (i.e. 30.3%) is the predominately Black VAP District 23 even though Black V AP is only 19.5% of the county total. Similarly, one (District 13) of the Harris County entitlement of 5.05 districts is predominately Black VAP. This represents 20% of the senate districts even though Black V AP is only 18.1% of the county total. On a statewide basis, the two predominately Black senate districts constitute only

6.5% of the seats in the Texas Senate compared to Black V AP of 11.3% statewide. However, no insular community of Black voters exists outside of these two counties that is sufficiently large that it could constitute the dominant racial group in a senate district.

Effect on Hispanic Citizens. The LRB Senate Plan also avoids retrogression in Hispanic majority districts by maintaining the existing seven majority Hispanic VAP districts despite needing to overcome the fact that most of these existing Hispanic majority senate districts are significantly underpopulated.[65] Moreover, the LRB Senate Plan's fairly designed districts result in representation that is approximately proportionate for Hispanic citizens on a regional and statewide basis.

The area of Texas encompassing South and Southwest Texas and El Paso and Bexar Counties is entitled to 6.2 senate districts.[66] The LRB Senate Plan apportions 6.4 senate districts.[67] Although Hispanic V AP is only 65.2% of the total in this area,

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[65] The majority Hispanic senate districts are District 6 (-14.27%), District 19 (-15.99%), District 20 (-5.99%), District 21 (+.65%), District 26 (-14.16%), District 27 (+5.40%), and District 29 (-14.27%). Four of the five most underpopulated existing senate districts in the state are ones with Hispanic majorities. The total underpopulation of these existing districts is 394,724 persons, or 58.7% of the population of an ideal senate district. *See* Appendix H.

[66] This is the area encompassing all of the counties within senate districts 19, 20, 21, 26, 27 and 29, as well as the remaining portion (298,603 persons) of Bexar County that makes-up approximately 44% of District 25.

[67] *Id.*

with Spanish surname registered voters totaling only 56.9% of the registered voters in this area.[68] Hispanic VAP majorities dominate six (93.75%) full senate districts.

In addition, District 6 in Harris County is maintained with 66.1% Hispanic VAP.[69] Hispanic voters therefore dominate one (19.8%) of the 5.05 senate districts to which Harris County is entitled. By comparison, Hispanic VAP is 29.6% of the Harris County total, but spanish surname voters constitute only 14.9% of the registered voters in the county. The percentage of Hispanic citizen V AP in Harris County is likely to be nearer to 15% than to 29%.[70]

In addition to the seven majority Hispanic VAP districts, Senate District 14 has historically elected an Hispanic senator despite only 27.1% Hispanic VAP. The Hispanic V AP percentage in District 14 under the LRB Senate Plan is 29.1% Hispanic VAP. As a result, considered statewide, eight (25.8%) of the senate districts in the LRB Senate Plan either have a majority Hispanic VAP or are districts in which Hispanic candidates for senator historically have won election as the candidate of choice of the

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[68] *Id.* The total of spanish surname registered voters in the area is approximately I, 135,990 of a total of 2,008,175 registered voters.

[69] District 6 at present is represented by Senator Mario Gallegos. The existing percentage of Spanish surname registered voters is 46.4%. The LRB Senate Plan maintains District 6 at 46.3%.

[70] In 1990 only approximately 59.6% of Hispanic voting age persons in Harris County were citizens eligible to register and to vote. If this is true for 2000, only approximately 17.5- 19% of citizen voting age population in Harris County is Hispanic.

District's Hispanic voters. This compares favorably to the percentage of Hispanic VAP (28.6%) and the percentage of spanish surname registered voters (19.5%) statewide. The percentage of Hispanic citizen voting age population statewide is likely to be nearer to 22% than to 28 %.[71] Therefore, the Senate LRB Plan results in more than proportionate representation for Hispanic citizens on a regional and statewide basis.[72]

Proposals were received for the creation of a majority Hispanic VAP senate district in Dallas County.[73] After review, it was found that this proposed district would have a detrimental impact on existing predominately Black District 23 without producing a senate district in which Hispanic voters could constitute the dominate racial or ethnic group.[74] Therefore the district is not included within the LRB Senate Plan. Proposals also were received

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[71] In 1990, only approximately 76.7% of the Hispanic voting age inhabitants of Texas were citizens eligible to register and to vote in Texas. Although the specific percentage is not yet known for 2000, many factors, including low spanish surname voter registration in relation to Hispanic voting age population, indicate that a significant percentage of Hispanic inhabitants statewide are not citizens of the United States. If the 76.7% figure is applicable in 2000, Hispanic citizen voting age population statewide is approximately 21.9-23%.

[72] The seven majority Hispanic YAP districts alone (without including District 14) constitute I 1.5% of this state's 31 senate districts.

[73] The plans were submitted during the LRB process by State Representative Domingo Garcia and the Mexican American Legal Defense and Education Fund (MALDEF). The plans were very similar; perhaps the same.

[74] The proposed plans produced districts with less than 25% spanish surname registered voters.

to draw districts extending from far South Texas into West, Central and Eastern Texas to create one additional senate district with a majority of Hispanic VAP.[75] Although the LRB tried to fairly draw districts in compliance with the Voting Rights Act, it determined that it was not mandated by law to draw these districts designed to maximize Hispanic voting strength, particularly when such districts were contrary to traditional districting criteria and when the LRB Senate Plan already achieved roughly proportional representation for Hispanic citizens on a regional and statewide basis.

VI.

Conclusion

The LRB House and Senate Plans do not have the effect of worsening the position of racial or ethnic minority voters with respect to their effective exercise of the electoral franchise in violation of Section 5 of the Voting Rights Act. Moreover, the Plans result in * * *

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[75] These plans were received from MALDEF. The statewide plan proposed to maximize Hispanic voting strength by creating the maximum number of senate districts with a majority of Hispanic voters.

Statement of the Honorable Sergio DeLeon

1. My name is Sergio DeLeon. I serve as Constable of Precinct 5 in Tarrant County, Texas, a position I have held since 2001. My constable district encompasses most of the core Hispanic neighborhoods in Fort Worth. The district includes the historic North Side extending south to pick up the growing Hispanic neighborhoods in the Lake Como area and then extending further south to include the large and growing Hispanic neighborhoods in the south side.

2. As a Latino elected official who has represented a Latino opportunity district throughout the past decade, I have important insight and knowledge about the challenges, aspirations and opportunities afforded to those I represent and to those in the Latino community throughout the North Texas region.

3. Over the course of the decade, Hispanic and African American leaders in Tarrant County had paid close attention to the rapid growth of the minority population within the boundaries of Senate District 10. As the 2008 election approached, we understood that the minority community had become sufficiently large and united to form an effective coalition to elect our candidate of choice. We made a conscious and deliberate effort to recruit and unite behind Wendy Davis as our candidate of choice.

4. Organizational and financial support was committed to the election of Wendy Davis to the near exclusion of statewide candidates, including our Presidential candidate, Barrack Obama and our US Senate candidate Rick Noriega. As minority community leaders, we understood that diverting resources to statewide candidates would harm rather than enhance our opportunity to elect our candidate of choice in Senate District 10.

5. Our singular focus on District 10 in 2008 was successful. Hispanic and African American voters formed a strong coalition in support of Wendy Davis. She was elected by garnering over 90 percent support from minority voters which overcame strong opposition from a large majority of Anglo voters.

6. The election of Wendy Davis in 2008 strongly establishes that minority voters in District 10 have the opportunity to elect their candidate of choice. It is an example of local minority leaders and minority voters making a hard and pragmatic decision to focus resources to in a way that would best serve our community.

7. Using the reconstituted election results of statewide candidates in District 10 provides an inaccurate view of the district. In fact, reliance upon statewide races to analyze the effectiveness of minority voters in Senate District 10 reflects a basic failure to understand or respect the ability of minority voters to organize and make informed and

pragmatic decisions on the best use of scarce financial and organizational resources.

8. The ability and opportunity for minority voters in Senate District 10 was clearly noted by partisan State leaders. Their reconfiguration of Senate District 10 is a deliberate effort to destroy the effective coalition that exists within the district. By breaking apart and separating minority neighborhoods into several Anglo-controlled districts, State leaders have dismantled an effective coalition of minority voters that proved its ability to elect in 2008 and would only become stronger in the years ahead.

9. As a result of the destruction of Senate District 10 as a minority coalition district under the state's proposed plan (S148), the minority communities in senate District 10 are split among several districts and we lose our ability to impact senate elections. This fracturing of the minority community will also cause us to lose our representational interest because none of the district with territory in Tarrant County will be held by senators who pay any attention to the particularized needs of the minority voters in our County. Indeed, some of those other senators who will not represent minority voters from Tarrant County if S148 is approved have been outright hostile to the interests of blacks and Latinos in Texas and in Tarrant County.

I declare under penalty of perjury that the foregoing is true and correct.

This **19th** day of October, 2011.

/s/

Sergio DeLeon

DECLARATION OF MARC VEASEY

Pursuant to 28 U.S.C. 1746, I, Marc Veasey declare, that:

1. My name is Marc Veasey, and I serve as State Representative in Texas House District 95 in Tarrant County, Texas. I grew up in the black community in Fort Worth. I worked as a congressional staff member specifically assigned to Tarrant County for almost ten years. I have represented the core African American neighborhoods, as well as significantly large and growing Hispanic neighborhoods, in Fort Worth, Forest Hill and Everman in the Texas House of Representatives since 2005.

2. I have been asked to provide a sworn declaration providing my views on the local political and electoral dynamics in Senate District 10. I have a perspective that is informed by personal experience, as a person of color who has run for office in Tarrant County, and as someone who has worked successfully to understand the particular views and special needs of my community.

3. The City of Fort Worth and adjacent suburban cities including Forest Hill and Everman contain the third largest concentration of African American voters in the State of Texas. The Hispanic population in our area is also large and growing.

4. Since the early part of the last decade, there has been a strong awareness among African

American and Hispanic leaders that the minority population within Senate District 10 (African Americans and Hispanics) is large, was growing, is cohesive and has the ability to elect its candidate of choice in that district. This belief was clearly shared by state leaders when, in the 2001 submission to the US Department of Justice for preclearance of its senate redistricting plan, the State of Texas justified the boundaries of District 10 by noting the potential for minority voters to unite and vote in coalition to elect our candidate of choice. As you'll see below, the State's 2001 prediction proved to be correct.

5. Election results in 2006 reinforced our belief in the viability of Senate District 10 when Terri Moore, a talented but badly underfunded District Attorney candidate, nearly carried Senate District 10 while losing county-wide in Tarrant County by a much wider margin.

6. In anticipation of the 2008 State Senate election in District 10, I joined with other African American and Hispanic leaders to identify a candidate we could unite behind and provide the time, effort and financial resources needed to elect our candidate of choice to the Texas State Senate. Because African Americans and Hispanics in Tarrant county share many common interests, including socioeconomic and demographic characteristics, we worked together to advance those interests politically. As a coalition, we recruited and united behind

Wendy Davis. I, along with other members of the African American and Hispanic communities, worked intently with the Davis campaign to generate the intensity of support among African American and Hispanic voters and the level of turnout among these voters that would be needed to win election in District 10. Our efforts were successful. Senate Davis won election with overwhelming support among African American and Hispanic voters while Anglo voters in the district voted in bloc against her election. The statistical analyses performed by Dr. Allan Lichtman show this pattern of racially polarized voting quite clearly.

7. Reconstituted statewide or countywide election results in District 10 provide a flawed and inaccurate measure of the opportunity for minority voters to elect their candidate of choice. The 2008 election of Wendy Davis should be considered the definitive election to confirm that State Senate District 10 is an effective minority opportunity district.

8. Minority leaders in Tarrant County, as well as local and State Democratic Party leaders, intentionally directed much of their political energy and resources to Senate District 10. A practical, collective decision was made to expend energy and money to promote minority support and increase turnout among minority voters to elect Wendy Davis with the knowledge that success meant our candidate of choice would be seated in the State Senate. Conversely, we successfully discouraged the

expenditure of any substantive resources on statewide candidates (including financial resources) knowing that these candidates would not win election to statewide office even if they carried District 10.

9. The fact that we were able to direct and focus resources on the Senate District 10 contest and discourage the expenditure of substantive resources in Tarrant County on statewide campaigns is why reconstituted statewide election results from 2008 should not be used to assess whether minority voters have the ability to elect their preferred candidate to office in Senate District 10. Rather, the best evidence regarding the ability to elect a candidate of choice in Senate District 10 is the actual Senate District 10 results themselves. What the 2008 Senate District 10 results show is that minority voters were able to elect their candidate of choice in District 10. The 2008 reconstituted statewide election results, or any other statewide results for that matter, are simply not a reliable or accurate measure of minority voting opportunity in Senate District 10.

10. As an elected official who represents a majority-minority district in the Texas House, I know how important it is to have an officeholder that will focus on the needs and interests of the minority community. Senator Davis, who many of my African American and Hispanic constituents voted for and supported, has been extremely responsive to the needs and interests of the minority

community. To me, that responsiveness confirms the fact that in Senate District 10 under the benchmark Plan (S100), we had an effective opportunity to elect our preferred candidate to the state senate who in turn was more attuned to the needs of the minority community.

11. The State's chosen method of dismantling and destroying District 10 is further hard evidence that minority voters in the district can elect their candidate of choice. In order to convert Senate District 10 to a district likely to elect an Anglo candidate, Texas state leaders overtly separated and removed minority neighborhoods from each other.

12. Under the State's proposed plan, core African American neighborhoods I represent (including southeast Fort Worth, Forest Hill and Everman) were taken from District 10 and attached to rural based Senate District 22 that extends over 100 miles south even beyond the distant City of Waco. Heavily Hispanic neighborhoods in Fort Worth's historic north side were removed from District 10 and attached to District 12, which is based in Anglo dominated Denton County.

13. The state chose to divide and conquer minority voters because they knew we vote in coalition in Tarrant County and did so effectively in the 2008 election. In order to destroy the ongoing ability of minority voters to unite and vote in coalition to elect their candidate of choice in District 10, the State

deliberately separated key minority neighborhoods from one another thus making the formation of an effective coalition impossible.

I declare under penalty of perjury that the foregoing is true and correct.

This 19th day of October, 2011.

/s/

MARC VEASEY

DECLARATION OF TARRANT COUNTY COMMISSIONER Roy Brooks

Pursuant to 28 U.S.C. 1746, I, Roy Brooks declare that:

1. My name is Roy Brooks, and I am an African American resident of Fort Worth, Texas who has served as a County Commissioner of Tarrant County (Precinct 1) for almost eight years. For 14 years prior to that I was the Precinct 1 Administrator. I also served for six years on the Forest Hill City Council, which is a predominately black suburb adjacent to Fort Worth. My Commissioners' Precinct includes almost every predominantly African-American neighborhood in the City of Fort Worth and much of the Hispanic growth neighborhoods in the southern part of our County. With well over 20 years of public service under my belt, I have a great deal of experience and perspective to comment upon the voting behavior and the influence of minority citizens in Tarrant County and North Texas.

2. The reconfigured Senate District 10 proposed by the State of Texas is a deliberate attempt to undermine and destroy the ability of African Americans and Hispanics in Tarrant County to elect their candidate of choice. If the Voting Rights Act remains viable at all, the proposed Senate District 10 will be struck down, redrawn and restored as a majority-minority district where African Americans and Hispanics can elect their candidate of choice to the state senate.

3. The 2008 election of Wendy Davis is recognized throughout our community as a benchmark example of African American and Hispanic voters in Fort Worth working together cohesively and effectively to elect the candidate of our choice.
4. The growth of the minority population in District 10 and the emerging political strength of minority voters had been watched and nurtured carefully by me and other minority leaders since early in the past decade. By the 2006 election and the relatively strong performance of our District Attorney candidate, Terri Moore, in those voting precincts SD10, we realized that the opportunity to elect our candidate of choice to the state senate had arrived. The Republican Anglo incumbent, Kim Brimer, had largely ignored our community from the beginning of his service, rarely visiting our neighborhoods, and failing to seek our views or even soliciting our votes. We finally had the ability to make a change in 2008 in Senate District 10 and had every reason to do so.
5. African American and Hispanic leaders deliberately and aggressively recruited Wendy Davis to run in 2008. African American and Hispanic leaders pledged to each other and to the community at large to concentrate our efforts and our financial resources in order to inform, unite and mobilize minority voters. We knew that Wendy Davis would not be the candidate of choice of Anglo voters. To elect our candidate of choice, African Americans

and Hispanics had to come together and vote together, which we did.

6. Like other African American leaders in Texas and across the country, I was excited about Barrack Obama's campaign and supported him wholeheartedly, voicing my support of his campaign often and proudly. I also subscribed to the practical and hardnosed view that all politics is local. I knew that local time and local resources would be best spent building and supporting our local coalition united to elect our candidate of choice in Senate District 10.
7. The election of Wendy Davis confirmed the wisdom of our approach. By focusing on the District 10 race, we succeeded in electing our candidate of choice who would be beholden to our community specifically.
8. Most important, the 2008 election of Wendy Davis demonstrated the ability of minority voters in District 10 to unite, organize and exercise the voting strength needed to elect our candidate of choice. Davis won because she received overwhelming support from African American and Hispanic voters sufficient to exceed and defeat the heavy Anglo support given to her opponent. With Senator Davis, African American and Hispanic voters in Senate District 10 have a strong voice in the State Senate and someone who effectively represents our particularized needs.
9. The coalition of minority voters that elected Senator Davis to office did so because we were

interested in obtaining representation that would fully represent our interests in the State senate. In Senate District 10 prior to 2008, the particular interests of the minority community were not adequately represented in the Texas Senate. In Senator Davis, we have elected someone who fights for issues that are particularly important to the minority community, such as education and health care, to name just two.

10. The State's dismantling of Senate District 10 was not subtle or particularly clever. African American neighborhoods in southeast Fort Worth were broken off and attached to a rural senate district that extends south past Waco. Hispanic neighborhoods in Fort Worth's North side were attached to an ex-urban district extending north into heavily Anglo Northwest Tarrant County and Denton County. Other smaller minority neighborhoods were left in a depleted SD10 that would be dominated by Anglo voters. In short, minority voters have been fractured into other districts where we no longer will have an opportunity to effectively participate in the political process or to elect our preferred candidate to the state senate.
11. The proposed map is much more than an effort by Republicans to draw Republican districts. It is a message from State leaders to African American and Hispanic voters in Tarrant County telling us – how dare you organize and mobilize to make your own political choices.

12. Those looking for proof that District 10 should be protected under the Voting Rights Act as a minority opportunity district need look no further than the large and growing minority population within existing senate district 10 and the 2008 election of Wendy Davis. Reliance on any other election or any other candidate's performance in the district will lead to an incomplete and incorrect conclusion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this **20th** day of October, 2011.

/s/

ROY BROOKS

AFFIDAVIT OF BOYD RICHIE

My name is Boyd Richie. I currently serve as Chair of the Texas Democratic Party. I was appointed by the State Democratic Executive Committee in April of 2006 and have been re-elected by majority vote of the delegates attending the Texas Democratic Party conventions in 2006, 2008 and 2010.

During my tenure as Party Chair, considerable time and resources have been committed to key local races at the legislative and county levels. In choosing where to focus our limited resources, close attention has been paid to the demographic changes that have taken place in Texas over the last decade and the resultant increase in the voting strength and electoral opportunities of Hispanic and African American voters. Because the vast majority of African-American and Hispanic voters vote overwhelmingly for Democratic candidates over Republican candidates, areas of minority population growth can afford new electoral opportunities for minority voters and the Democratic candidates they support. This has been particularly true in key urban areas such as Dallas and Tarrant Counties where the Anglo population decreased over the decade while both the Hispanic and African American populations have increased making it possible that minority voters can unite in coalition to elect their candidates of choice in specific county and legislative elections. Indeed, between 2000 and 2010, the black and Hispanic population grew so dramatically (while Anglo population declined) that Democrats now control all of the countywide offices in Dallas County.

I have been asked to provide a sworn declaration in this case to address the local political and electoral dynamics in Senate District 10. It is especially important to look at the unique and particularized circumstances in Senate District 10, particularly the situation that existed in 2008 when minority voters in that district formed a coalition and elected their preferred candidate to office, State Senator Wendy Davis.

To truly understand the political and electoral dynamics in Senate District 10 that led to Senator's Davis' election in 2008, it is important to contrast that local election with other electoral contests that were on the ballot that same year. In 2008, it was no secret nationally, statewide or locally in Tarrant County that Texas would not be a state targeted by the Obama campaign to reach the 270 electoral votes needed to win the presidency. Moreover, Tarrant County, while containing the third largest concentration of African voters in Texas and a large and growing Hispanic population, is the most reliably Republican large urban county in Texas. Democratic statewide candidates, particularly when they have very limited financial resources like Texas statewide candidates did in 2008, do not devote resources to Tarrant County.

Local Tarrant County minority leaders, and the State Party that I chair, were well aware that devoting precious local resources to national and statewide campaigns in 2008 and 2010 that were not targeting Tarrant County was neither practical politically nor defensible to our donors and other supporters. In 2008, we made the practical and common sense decision to concentrate our efforts and

resources in Tarrant County to the Senate District 10 race, where a deliberate and focused effort to unite and turn out minority voters would actually elect the minority voters' candidate of choice, who would then go to the Legislature and serve the community. Had these resources been diverted to the national or statewide campaigns that were then ongoing, even if these statewide candidates had carried Senate District 10, they still would not have won the statewide vote. Intense local efforts on their behalf would not have resulted in an ultimate victory and indeed, would have diverted important financial resources away from the Senate District 10 race. Such a misuse and misdirection of resources on national or statewide campaigns in 2008 might well have prevented the victory for minority voters that was realized in Wendy Davis' election.

Senate District 10 in Tarrant County is an important example of a district where, in 2008, local minority leaders recognized that their voting strength had grown and reached a level where they could recruit, unite behind and elect their candidate of choice. These leaders recruited and united behind candidate Wendy Davis in 2008. A conscious, pragmatic decision was made to devote time, effort and resources to the Senate District 10 race, knowing that it would draw resources away from efforts to elect statewide Democratic candidates or to advance the Obama Presidential campaign. Though that was a hard choice to make as Party Chair, the Texas Democratic Party recognized the practical wisdom of this decision and focused its efforts in Tarrant County and in Senate District 10 in particular. To do this, there was a concerted effort to

build support from and mobilize African--American and Hispanic voters and to have them unite in their electoral support for Wendy Davis. We did this, even to the exclusion of efforts for the Obama campaign or other statewide candidates that were going on at that time.

This locally conceived and driven strategy was successful. In 2008, Wendy Davis was elected to the State Senate due to overwhelming support from African American and Hispanic voters. The large turnout level of support from minority voters for Wendy Davis overcame the large majority of Anglos who voted against her. The election results in Senate District 10 in 2008 are far and away the most reliable measure of Senate District 10 as a minority opportunity district rather than any national, statewide or county-wide election contest that may be reconstituted within District 10.

I understand that in 2001, the State of Texas when it drew Senate District 10 and submitted its state senate redistricting map for preclearance approval, noted that Senate District 10 would likely grow into a minority opportunity district over the course of the decade. That prediction came true. The election of Wendy Davis in 2008 in Senate District 10 with the strong support of African American and Hispanic voters clearly illustrates that Senate District 10 has evolved into an effective minority opportunity district for African American and Hispanic voters. The emergence of Senate District 10 as a minority opportunity district is not surprising. In 2006, a local DA candidate and a local judicial candidate (running countywide in Tarrant County) did particularly well in their election,

especially among minority voters. Local leaders, such as African American state Representative Marc Veasey, African-American Tarrant County Commissioner Roy Brooks and Hispanic Constable Sergio DeLeon noted the 2006 results and realized that the minority voting population in Senate District 10 within Tarrant County was sufficiently large and growing, and could be united and mobilized to elect their candidate of choice. These minority leaders then made the decision to recruit a candidate who they felt would run a viable campaign, both electorally and financially, and garner the solid support of the minority community in Tarrant County.

It is also apparent in my view that State Republican leaders in the Texas Legislature recognized that minority voters in Senate District 10 can elect their candidate of choice when they redrew the district in 2011. The reconfiguration of Senate District 10 is an example of systematically undermining minority voting strength to prevent African American and Hispanic voters from electing their preferred candidate. The precise separation and removal of African-American and Hispanic neighborhoods from Senate District 10 into Anglo voter-controlled districts stretching far outside of the Dallas/Fort Worth region is clearly a deliberate effort to dismantle an effective minority opportunity district and intentionally discriminate against African-American and Hispanic voters.

Signed this 11th day of October, 2011.

/s/

BOYD RICHIE

REPORT ON RECENT GENERAL ELECTIONS IN TEXAS STATE SENATE DISTRICT 10 AND TARRANT AND DALLAS COUNTY, RACIALLY DISCRIMINATORY INTENT UNDERLYING THE STATE'S PROPOSED SENATE PLAN, AND EXAMINATION OFALTERNATIVE DEMONSTRATION REMEDIAL PLANS

Allan J. Lichtman
Professor of History
American University
Washington, DC 20016

Pursuant to 28 U.S.C. I 746, I declare under penalty of perjury that the information set forth in this report is true and correct to the best of my knowledge and belief.

Allan J. Lichtman

I. Statement of Inquiry [1]

1. I have been asked to consider the extent to which African American and Latino voters voted together cohesively in the 2008 general election for State Senate in the Tarrant County State Senate District 10 ("SD 10"), as well as in recent general

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[1] I previously prepared a report on the state's proposed congressional plan and the state's proposed state house redistricting plan in the consolidated San Antonio lawsuits, *Perez v. Perry* (lead case). This report deals exclusively with the proposed state senate map. In the interest of judicial economy and to avoid duplication, I am attaching and incorporating by reference my earlier report from the San Antonio litigation because that report also deals with issues pending before this Court.

elections covering Tarrant and Dallas County. I have also been asked to examine the degree of Anglo bloc voting against candidates of choice of Hispanic and African-American voters in the elections studied. In addition, I have been asked to consider whether Democratic Senator Wendy Davis, the prevailing candidate in the 2008 general election in SD 10, represents a consensus choice of African Americans and Latinos in her district. I also have been asked to examine alternative demonstration remedial plans for SD 10. Finally, I was requested to evaluate and report on whether the state's proposed senate plan was enacted with a racially discriminatory purpose. My expected fee in this matter is $400 per hour. I have enclosed an updated CV and a table of cases in which I have provided written or oral testimony.

II. Summary of Opinions

2. I found that Latino and African American voters in the 2008 general election for State Senate in District 10 and in recent general elections covering Tarrant and Dallas County are cohesive in that both voter groups overwhelmingly unite in support of candidates of their choice. These preferred candidates of choice were Democratic candidates. I also found that for the elections studied, Anglo voters strongly bloc voted against the candidates of choice of Latino and African American voters. I have also found Senator Davis was an overwhelming consensus choice of Latino and African American voters in the 2008 SD 10 election, and that Senator Davis was an elected by a unified coalition of Latino and African American voters. Obviously the ability of this coalition to elect candidates of choice in SD 10 and participate fully and effectively in the political

process would be destroyed by any plan that substantially diminished the percentage of minorities in this district or divided this politically cohesive coalition of minority voters. The state's proposed senate plan does both. Two demonstration/remedial plans I have reviewed, S120 and S156, demonstrate that it is feasible to create an alternative SD 10 that not only preserves, but substantially increases, the African American and Latino voter strength in this district. Both plans create a majority-minority citizen voting age population in their new versions of SD 10, and stand in sharp contrast to the state's proposed state senate plan that diminishes minority voting rights in Senate District 10. Finally, I have examined the facts surrounding the intent behind the state's proposed senate map. I conclude that there is strong evidence of racially discriminatory purpose underlying the state's proposed senate plan. My finding of racially discriminatory intent underlying the state senate plan is consistent with other experts who, in reviewing the enactment of the proposed congressional and state house maps, have found that those plans were enacted with a racially discriminatory purpose. See Reports of Dr. Ted Arrington (United States), Dr. Morgan Kousser ((Mexican American Legislative Caucus – MALC), Dr. Richard Murray (NAACP Expert), and Dr. Tiariea (Texas Latino Redistricting Task Force).

III. Qualifications

3. I am a Professor of History at American University in Washington, D.C., where I have been employed for 38 years. Formerly, I served as Chair of the History Department and Associate Dean of the

College of Arts and Sciences at American University. I received my BA in History from Brandeis University in 1967 and my Ph.D in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data. My areas of expertise include political history, electoral analysis, and historical and quantitative methodology. I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as Political Methodology, Journal of Interdisciplinary History, International Journal of Forecasting, and Social Science History. In addition, I have coauthored Ecological Inference with Dr. Laura Langbein, a standard text on the analysis of social science data, including political information. I have published articles on the application of social science analysis to civil rights issues. This work includes articles in such journals as Journal of Law and Politics, La Raza Law Journal, Evaluation Review, Journal of Legal Studies, and National Law Journal. My scholarship also includes the use of quantitative and qualitative techniques to conduct contemporary and historical studies, published in such academic journals as The Proceedings of the National Academy of Sciences, The American Historical Review, Forecast, and The Journal of Social History. Quantitative and historical analyses also ground my books, Prejudice and the Old Politics: The Presidential Election of 1928, The Thirteen Keys to the Presidency (co-authored with Ken DeCell), The Keys to the White House, and White Protestant Nation: The Rise of the American Conservative Movement. My most recent book, White Protestant

Nation, was one of five finalists for the National Book Critics Circle Award for the best general nonfiction book published in America.

4. I have worked as a consultant or expert witness for both plaintiffs and defendants in more than seventy-five voting and civil rights cases. These include several cases in the state of Texas, among them the 2003 congressional redistricting case that became the U. S. Supreme Court case, League of United Latin Am. Citizens (LULAC) v. Perry, 548 U.S. 399 (2006). The majority opinion written by Justice Kennedy authoritatively cited my statistical work several times. My work includes more than a dozen cases for the United States Department of Justice and cases for many civil rights organizations. I have also worked as a consultant or expert witness in defending enacted plans from voting rights challenges.

IV. Data and Methods

5. The voting analysis in this report relies on standard data utilized in social science: precinct by precinct election returns for relevant elections, with candidates identified by race and precinct by precinct breakdowns of voting age Latinos, African Americans, Anglos, and Others. Data was obtained from the Texas Legislative Council. The analysis utilizes the standard methodology of ecological regression that I have employed in some 75 previous voting rights cases. This procedure was recognized by the Supreme Court in Thornburg v. Gingles, 478 U.S. 30 (1986), and applied by the Court to single-member districts plans in Quilter v. Voinovich, 113 S.Ct 1149 (1993). My analysis based on these

methods was cited in the recent LULAC Supreme Court case.

V. Results of Analysis

6. The results reported in Table 1 show overwhelming Latino and African American voter support for Democratic candidate Wendy Davis in the 2008 general election for State Senate in District 10. In turn, Anglo voters strongly preferred her Republican opponent, Kim Brimer. Candidate Davis garnered only 30 percent of the Anglo vote. This pattern of Latino and African American cohesion for the Democratic candidate and Anglo opposition to such a candidate is consistent with the findings of other recent general elections covering Tarrant County. For five statewide general elections in 2008 and 2010 involving a mix of Latino, African American, and Anglo candidates, Latino and African American voters in Tarrant County were essentially unanimous in voting for Democratic candidates, whereas a mean of only 25 percent of Anglos voted for these candidates of choice of African Americans and Latinos. Similar patterns emerge in neighboring Dallas County, where Latino and African American voters were nearly unanimous in voting for Democratic candidates, whereas a mean of 29 percent of Anglos voted for these candidates of choice of African Americans and Latinos. These results are nearly identical for those obtained in the analysis of the 2008 general election for State Senate in Tarrant County Senate District 10.[2]

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[2] An estimate of 100% is often found in instances of very high cohesion. It does not mean that not a single African American or Hispanic voted for Republican candidates, but rather that

7. Although Senator Wendy Davis is an Anglo female, she was elected by a coalition of minority voters, who recruited her to run for the state senate. The sworn Declarations of African American Representative Marc Veasey (HD 95 in Tarrant County)[3], African American Tarrant County Commissioner Roy Brooks,[4] and Latino Tarrant County Constable Sergio DeLeon of Fort Worth,[5] along with Democratic State Party Chair Boyd Richie,[6] indicate that a coalition of African Americans and Latinos chose Davis as a Senate candidate who would best represent their interests and could prevail in a general election in Senate District 10. These Democratic leaders also indicate that they specifically targeted this race and focused their resources to this local, winnable campaign, rather than on other unwinnable statewide races. Therefore, other statewide races are not reliable indicators of the opportunities for African Americans and Latinos to elect State Senate candidates of their

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the estimate of African American and Hispanic cohesion is extremely high. Similar results emerged in the 2003 analyses in LULAC v. Perry. The five general elections studied included the 2008 presidential (an African American Democrat and an Anglo Republican), the 2008 US Senate (a Hispanic Democrat and an Anglo Republican), the 2008 Supreme Court Chief Justice (an Anglo Democrat and an African American Republican), the 2010 gubernatorial (an Anglo Democrat and an Anglo Republican), and the 2008 Lt. Governor (a Hispanic Democrat and an Anglo Republican).

[3] Appendix 2

[4] Appendix 3

[5] Appendix 4

[6] Appendix 5

choice and fully participate in the political process in SD 10. Such opportunities, which resulted in the election of Senator Davis, would be eliminated under the state-passed plan that essentially destroys the minority coalition in this district. The state passed plan reduces the African American plus Latino voting age population in SD 10 by a politically significant 7.2 percentage points, from 42.4 to 35.2 percent. (*Affidavit of Marc Veasey*, Oct. 13, 2011 and *Affidavit of Boyd Richie*, Oct. 11, 2011)

8. Two alternative plans , S120 and S156, demonstrate that it is feasible to create a voting age and citizen-voting age majority-minority district in the region of SD 10 that provides minority voters effective opportunities to elect candidates of their choice to the Texas State Senate. As demonstrated by the voting age population data in Table 3, new SD 10 in each of these two alternative plans substantially strengthens the African American and Latino populations by nearly 30 percentage points as compared to existing SD 10, which is 42.4 percent voting age African American and Latino combined. Also, as demonstrated by the citizen voting age population in Table 4, these two alternative plans created new versions of SD 10 in which African Americans and Latinos combined are a substantial majority of the citizen voting age population. Under these alternative plans, SD 23 (currently represented by African American Senator Royce West in Dallas County) is maintained as an African American opportunity district, equal in effectiveness to SD 23 in the current district (benchmark plan) and under the State's proposed senate plan.

VI. Discriminatory Intent

9. I also reviewed the evidence regarding whether the state's adopted State Senate plan was enacted with a racially discriminatory intent.

10. When historians such as myself or other scholars review facts and circumstantial evidence to determine whether a decision of a governmental body (or any decisionmaker for that matter) is the product of a racially discriminatory purpose, it is ordinarily a fact-intensive and sensitive inquiry. That is true in this case as well. What I found was that the redistricting process in Texas that produced a state senate map which itself has racially discriminatory effects, clearly exhibits the indicia of a racially discriminatory intent aimed at African-Americans and Latinos.

11. **Discriminatory Effect**. Although the discriminatory effect of a redistricting plan does not by itself prove discriminatory intent, it is a good starting point in assessing whether a plan is the result of intentional discrimination. Thus, it is important to consider whether the plan resulted in the diminution of minority opportunities to elect candidates of their choice to office and participate effectively in the political process. As demonstrated above, the substantial reduction of the African American and Latino population in SD 10 under the state's adopted senate plan clearly deprives these minority groups, that are overwhelmingly cohesive in their voting behavior in general elections, any realistic chance to once again elect their candidate of choice to State Senate from this district, or any other senate district in Tarrant County. The coalition of African American and Latino voters that elected Senator Davis in 2008 demonstrated an effective

ability to participate in the political process and to elect a candidate of choice to office in Senate District 10. That effective coalition of minority voters has been fractured severely into several other senate districts under the state's proposed map. The voting strength of minority voters (African Americans and Latinos) has been significantly diminished under the state's proposed senate plan.

12. **Cracking of Minority Communities.** The state legislature, in dismantling benchmark SD 10 cracked politically cohesive and geographically concentrated Latino and African American communities and placed members of those communities in districts in which they have no opportunity to elect candidates of their choice or participate effectively in the political process. The decision-makers did so in disregard of the traditional redistricting principle of maintaining communities of interest, a principle they claim to have adopted in devising the plan. See Deposition of Doug Davis, architect of state senate plan. As the *Dallas Morning News* reported, "African American voters in southern Tarrant County would be moved into a rural district south of Fort Worth, while Hispanics in the northern part of the county would be switched to a district centered in mostly white Denton County." These decision-makers knew precisely what they were doing. The state Legislative leaders and those who drew the state senate map were warned during the process against fracturing these neighborhoods and communities by representatives of the Latino and African American communities, but did so regardless. Similar warnings about splitting up the minority community also came from citizen letters

(all letters cited in this report are attached in Appendix 1)[7]

13. **Racial Composition of Decision Makers**. The Senate Redistricting Committee included a majority of Republicans, all Anglos, and a minority of Democrats, among them African Americans and Latinos. The all-Anglo Republican majority prepared and voted for the adopted map over the opposition of all minority Senators. The House Redistricting Committee likewise included a majority of Republicans and a minority of Democrats. Only one Republican was a minority member, Aaron Pena, who switched parties to become a Republican after the 2010 election, when he was re-elected as a Democrat. Pena was the only minority on the House Committee to vote in favor of the Senate plan. During consideration by the entire State House, the state's plan was adopted as a result of overwhelming support from members representing Anglo majority and Anglo-controlled districts over the near unanimous opposition of minority legislators representing minority opportunity districts.

As noted in the sworn Declaration of African American State Senator Rodney Ellis,

> A number of Senators representing minority opportunity districts voted in support of the

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I. [7] "Texas Senate Approves Redistricting Plan After Rejecting Fort Worth Amendments," *Dallas Morning News*, 17 July 2011.For examples of warnings prior to final adoption of the State Senate plan, see "Texas House Oks Senate's Proposed Voting Districts," *Lufkin Daily News*, 20 May 2011.

State's plan on final passage. It is important to note, however, that those voting for the plan did so to avoid the near certainty that the map would be even worse if the Senate deadlocked and the plan was ultimately drawn by the Texas Legislative Redistricting Board.

Under the Texas Constitution, if the Legislature fails to adopt a Senate redistricting plan, the responsibility falls to a board made up of the Lt. Governor, Speaker of the House, State Attorney General, State Comptroller and State Land Commissioner. Many Senators feared, with justification, that this harshly partisan body of statewide elected officials would dismantle not only District 10 but other minority opportunity districts as well.

It is important to note that all 12 Senators who represent minority opportunity districts voted in support of the alternative Senate plan offered by Wendy Davis that was tabled by the Anglo majority. Moreover, every minority opportunity Senator joined in signing an official statement entered into the Senate record expressing strong opposition to the discriminatory process used and the retrogressive map adopted.

Declaration of State Senator Rodney Ellis at page twelve.[8]

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[8] Appendix 6

See also sworn Declarations of Latina State Senator Judith Zaffirini[9] and African American State Senator Royce West.[10]

14. **Exclusion of Minorities from the Redistricting Process**. Anglo majorities in both the Senate and House redistricting Committees manipulated the redistricting process to the benefit of Anglos and to the detriment of minorities and Senators representing majority-minority districts. During the process, in a May 13, 2011 letter to the Chair of the Senate Redistricting Committee by five minority Senators on the Committee documented this discriminatory disparate treatment. The Senators wrote,

> In the weeks leading up to the committee's action on the Senate redistricting bill, some senators were allowed ongoing participation in developing the map. Their concerns were heard early, and they were allowed to view and respond to draft proposals. Other Senators, however, were not allowed to see even their own districts on the map until less than 48 hours before it was laid out in committee. Their concerns were neither solicited nor given fair consideration.
>
> Most of the Senators given access to the process represented Anglo-controlled districts. Most of those locked-out of the process represent large minority communities whose rights are protected under the Voting Rights Act.

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[9] Appendix 7

[10] Appendix 8

> Excluding elected representatives of minority citizens is no different than excluding minority citizens themselves.[11]

Similar exclusion is documented in a 10 May 2011 letter to the Senate Redistricted Chair by Senator Wendy Davis, who represents SD 10, which has a majority-minority population.[12]

In a sworn declaration from African American State Senator Rodney Ellis that is attached, he stated,

> "State leaders were clearly determined to prevent minority voters in District 10 from demonstrating their ability to elect the candidate of their choice in future elections. The State's adopted map carefully targets and removes African American and Hispanic neighborhoods from District 10 – attaching some to a rural district with no commonality of interest with Fort Worth urban voters, and attaching others to suburban and exurban districts controlled by Anglo voters.
>
> Texas has a long and sad history of preventing minority voters from exercising their right to participate in the political process. Certainly Texas Senators who represent minority opportunity districts in Texas were prevented from exercising their

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[11] Full Letter Included in Appendix 1

[12] Full Letter Included in Appendix 1

> right to defend and protect minority citizens during the 2011 redistricting process."[13]

The sworn testimony of a state senator of Senator Ellis' experience and stature is powerful evidence that the state senate plan was racially discriminatory in both its purpose and effect. Senator Ellis' statement is not a half-hearted or less than vigorous attack on the racial discrimination underlying the state senate plan. He testifies in the strongest possible terms that the racial discrimination at work here was not marginal; instead, Senator Ellis provides direct and personal testimony that the plan is racially discriminatory in purpose and effect.

The same can be said of African American Representative Marc Veasey's sworn Declaration. Veasey was a Member of the House Redistricting Committee and has provided an unambiguous sworn statement detailing the intentionally discriminatory treatment he and other minorities suffered in the redistricting process. Similarly, State Senators Zaffirini and West, also minority members of the Senate Redistricting Committees, have provided sworn declarations to the same effect. These minority members of the redistricting committees in the House and Senate were in an excellent position to personally observe the redistricting process. Each of these minority members have provided strong and clear statements of the intentionally racially discriminatory and exclusionary treatment of minority voters and their elected representatives,

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[13] Appendix 6

both in terms of the redistricting process as well as the discriminatory effects of the state senate plan.

15. Procedural and Substantive Departures From Past Redistricting Cycles. Like Senator Ellis, Senators Zaffirini and West are long-serving and highly regarded members of the Texas Senate and veterans of past redistricting cycles. Their statements provide a unique and important historical perspective on the redistricting process, particularly how this process deviated from past redistricting cycles. For example, in past senate redistricting cycles, state officials went across the state and held public hearings on redistricting plans and proposals. The State failed to do so this time. Moreover, even the state senate's outside legal counsel urged the senate leadership to slow the process down and keep it more in line with past redistricting cycles, but this advice went unheeded. See Statement of Judith Zaffirini. Such departures from past redistricting practices are additional indicia of racially discriminatory purpose.

16. Contemporaneous Statements Made By Legislators. As an historian, and as an expert witness who has prepared or reviewed numerous expert witness reports on the issue of racially discriminatory intent in redistricting and Voting Rights Act cases on the issue of racially discriminatory purpose, the statements made by legislators who actually were in a position to be involved in the legislative process and who ultimately voted on the senate map can be important evidence that the plan fails to meet the proscribed purpose and effect requirements of Section 5. The fact that Senators Ellis, Zaffirini, and West, and

Representative Veasey (and other elected officials in the senate and house, including Senator Davis) made these concerns known to senate leaders *during the legislative process* enhances not only the credibility of their statements, but also the unresponsiveness of those who drew the senate map to the concerns of racial and ethnic minority representatives and their constituents.

17. **Minority Opposition**. The Senate redistricting plan was enacted in the face of near universal opposition from minority legislators, citizens, and interest groups. Just this week, as an additional indication of minority opposition to the state senate plan, the League of United Latin American Citizens ("LULAC:), a national Hispanic organization, filed a Voting Rights Act challenge against the Texas redistricting plan for State Senate in Texas. With regard to State Senate District 10 specifically, and as the sworn Declarations of the Senators and Representative referenced above show, minority legislators have been outspoken for months expressing clear and strong opposition to the destruction of that effective minority coalition senate district.

18. **Racial Animosity**. The Texas legislature enacted and the governor signed the State Senate redistricting plan and other redistricting plans amid a high degree of racial animosity during the process. This racial tension is documented in a news article entitled "Racial Tensions Wrack Capital," by the *Amarillo Globe-News*. It reflects disputes between Anglos and minorities in Austin, not just over redistricting, but over other tense issues as well, such as controversial voter ID legislation and

proposed legislation that would deny undocumented persons living in Texas from paying in state tuition rates at public colleges and universities in Texas. This racial tension is also evident in the letters cited above.[14]

19. The set of circumstances documented here is very close to those of the redistricting in Los Angeles County in the 1980s, which the federal District and Circuit Courts found intentionally discriminated against minorities. I was an expert witness in that case. Although I testified on racially polarized voting patterns and discriminatory effects of the redistricting plan, not intent, I am extremely familiar with the intent evidence from that case as well.[15] As noted above and in my attached CV, I have served and testified as an expert witness in over 75 redistricting or Voting Rights Act cases, many of which involved allegations of racially discriminatory intent. The evidence I have cited herein and relied upon in reaching my conclusion in this case, that the proposed State Senate redistricting plan that is the subject of this lawsuit was enacted with a racially discriminatory purpose and will have a retrogressive effect, is quite similar to the types of evidence that that I (and other expert witnesses) have relied upon in other Voting Rights Act cases.

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[14] "Racial Tensions Wrack Capitol," *Amarillo Globe-News*, 18 June 2011.

[15] *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990). Garza v. County of Los Angeles, 756 F. Supp. 1298 (C.D. Cal. 1990).

Table 1

Ecological Regression Estimates

Mean Vote for Democratic Candidate

Latino, African American, Anglo Voters

2008 General Election for State Senate District 10

	% of Latino Voters for Candidate	% of African American Voters for Candidate	% of Anglo Voters for Candidate
Davis, Democrat	99%	99%	30%
Brimer, Republican	0%	0%	67%
Cross, Libertarian	1%	1%	3%

Table 2

Ecological Regression Estimates

Mean Vote for Democratic Candidate

Latino, African American, Anglo Voters

Tarrant County, 5 General Elections

	% of Latino Voters for Democratic Candidate	% of African American Voters for Democratic Candidate	% of Anglo Voters for Democratic Candidate
Tarrant County	100%	100%	25%
Dallas County	99%	99%	29%
* 2008 President, 2008 US Senate, 2008 Supreme Court Chief Justice, 2010 Governor, 2010 Lt. Governor.			

Table 3

Voting Age Population in Senate District 10, 2 Alternative Demonstration Remedial Plans

		%A	%B	%H	%BH	%O
S156	VAP:	24.7	21.7	50.2	71.4	3.9
S120	VAP:	24.5	25.7	46.1	71.2	4.2
Source: Texas Legislative Council, Population Reports						

Table 4

Citizen Voting Age Population in Senate District 10, For African Americans, Hispanics, and African Americans and Hispanics Combined, 2 Alternative Demonstration Remedial Plans

		%B	%H	%BH
S156	CVAP:	32.6	26.3	58.9
S120	CVAP:	30.3	29.9	60.2

Source: Texas Legislative Council, Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey

DECLARATION OF TARRANT COUNTY SENATOR WENDY DAVIS

Pursuant to 28 U.S.C. 1746, I, Wendy Davis declare that:

13. My name is Wendy Davis, and I am a resident of Fort Worth, Texas who has served as a Texas State Senator representing Senate District 10 since 2009. Immediately prior to my election to the State Senate, I served for nine years on the Fort Worth City Council, representing a culturally and ethnically diverse city council district. For many years, I have worked with minority leaders in Tarrant County on issues that benefit and enhance the opportunities for minority citizens in our region.

14. Senate District 10 includes almost every minority neighborhood in the City of Fort Worth as well as close-in predominately minority suburbs such as Forest Hill and Everman and other growing minority neighborhoods in Arlington. Senate District 10 contains the third largest concentration of African American voters in the state of Texas, and its Hispanic population is large and growing.

15. I sought election to the State Senate in 2008 after intense consultation with, and encouragement from, African American and Hispanic leaders in Tarrant County. I would not have sought election in 2008 had I not received the strong and active support of local African American and Hispanic leaders.

Moreover, the success of my election would not have been possible had I not received the near unanimous support of African American and Hispanic citizens voting in coalition to overcome opposition from a large majority of Anglo voters.

16. Prior to my seeking election, there had been wide recognition in Tarrant County that the Hispanic and African American population in Senate District 10 was growing relative to the Anglo population and had become a majority in the district. Consequently, African American and Hispanic leaders resolved to activate their coalition and commit the physical and financial resources required to overcome Anglo opposition and elect their candidate of choice. Their efforts were successful in 2008 and resulted in my election to the State Senate.

17. In its 2001 submission to the Department of Justice asking for preclearance of that Senate redistricting plan, the State of Texas acknowledged the likelihood that the minority population in Senate District 10 would grow sufficiently over the decade to unite to elect their candidate of choice. However, when that forecast was confirmed by my election in 2008, Texas State leaders used a purposefully discriminatory redistricting process to dismantle Senate District 10 as a majority minority district and to destroy the opportunity for African American and Hispanic voters to elect their candidate of choice.

18. Upon my election, I recognized my responsibility as the representative of a minority opportunity district to defend and protect the interests of the minority coalition in Senate District 10 and further recognized that I would be called upon to continue to earn the support of Hispanic and African American voters through my representation. During my service in the Senate, I have kept open and clear communication with minority leaders and other voters to insure that the positions I take and the votes I cast meet our community's needs and are responsive to their concerns.

19. On a number of key issues, I have taken an active leadership role to promote the concerns of Senate District 10. I have fought hard and effectively against egregious cuts in funding for public schools, even leading a filibuster to block inexcusable cuts in public school funding. I led the effort to end payday lending that exploits those most in financial need and erodes the quality of life in the neighborhoods that I represent. I actively joined the coalition in arguing successfully to block a Voter Photo ID bill in 2009 and I played an important role in building the legislative record against the vote suppressing Voter Photo ID law passed by the legislature in 2011 that is under review by the US Department of Justice. Texas was among the first states to enact legislation that allows the children of illegal residents who were brought into our country as young children to attend Texas colleges and

universities as instate students. I have fought back hard and successfully to block recent efforts by Anglo State Senators to repeal this policy. I also played a very active role in blocking "Sanctuary City" legislation from passage, which would have turned our government officials into immigration agents, even in our public school system. On every issue cited above, Senators Nelson (District 12) and Birdwell (District 22) – in whose districts minority neighborhoods from District 10 were assigned – adopted and promoted positions opposite of mine and contrary to the interests of minority citizens.

20. Certainly in redistricting I understood my responsibility to protect the voting strength of African Americans and Hispanics in Senate District 10. I made every possible effort throughout the legislative session to communicate the concerns and needs of my constituents and to gain information regarding the configuration of the Senate redistricting map. My efforts were aggressively rebuffed at every turn.

21. On many occasions early and throughout the session, I specifically requested to meet with Redistricting Committee Chairman Kel Seliger to discuss the needs of my constituents and to view and respond to draft configurations of Senate District 10. Senator Seliger refused to discuss redistricting in any substantive manner and failed to share any draft maps.

22. As the legislative session progressed, I was given one perfunctory opportunity, in March of 2011, to provide input to the redistricting process. During that meeting with Senator Seliger and his committee staffer, Doug Davis, I stressed the importance of keeping the existing minority coalition in place in Senate District 10. Though I asked for draft plans to be shared with me during that meeting, they were not. Neither were they shared with me after repeated requests subsequent to that meeting, though I was aware that other Senators who represented Anglo majorities were being provided an opportunity to see draft maps and to provide their feedback on those maps.

23. During late April and throughout May, 2011, draft maps were set up in a room adjacent to the senate floor and various members were invited, one by one, to leave the floor with Senator Seliger to review draft proposals and provide their feedback. When I realized that this was occurring, I asked Senator Seliger to be provided the same privilege but was never granted that opportunity. I also made this request to Senator Seliger's committee staffer, Doug Davis, but was not granted the opportunity.

24. In early May, 2011, it became clear to me that Senator Seliger had arrived at a proposed plan for North Texas, including a proposed plan for Senate District 10, when I directly asked Senator Seliger to "tell me what you are proposing for my district." Senator Seliger

replied that it was oddly shaped but that he did not think that it was as harmful as I might fear. I asked to see it and was told that he was first working with the Senators representing districts adjacent to mine (all of whom represent Anglo districts) to resolve their concerns. He mentioned specifically that Senator Nelson had not yet been made happy with proposals for her district and that she "did not want to give up any of her existing district, even though it was overpopulated." He indicated that they had shown her several alternatives that she had rejected and that they were "still working to get her happy."

25. As the month progressed, I continued to make requests to see the proposed maps, culminating in a letter written and delivered to Senator Seliger on May 10, 2011 seeking that opportunity (letter attached). In spite of these repeated requests, the first opportunity I was given to see the proposed map was on the evening of May 11, 2011, less than 48 hours prior to the public hearing on the map and only five days prior to the floor vote approving the map.

26. Meanwhile, Senator Seliger and the staff responsible for drafting redistricting plans met repeatedly with Senators representing majority Anglo districts. These Senators were given full participation in the redistricting process and ultimately were provided with Districts that accommodated their specific requests.

27. Approximately two weeks prior to the public hearing on the maps, Senator John Carona, noticing my frustration, offered that he would show me what the plan was for my district. I met with him in his Senate office for that purpose, but he did not have the map. Instead, he revealed to me that there were several priorities that the Governor's office had expressed in re-districting, one of which was to make changes necessary in Senate District 10 to "get Wendy Davis." He also revealed that Republican members had been told that the map would likely not survive a voting rights challenge, and he expressed his concern that this would mean that the Court would be put in charge of redrawing the North Texas districts, which includes the district he represents. He indicated that he and Senator Shapiro (another North Texas Senator) had been involved in drafting the maps for their districts and that there had been some give and take between them regarding what was to be the final proposed plan. Both Senator Shapiro and Senator Carona represent districts controlled by Anglo voters.

28. Conversely, the boundaries of Senate District 10 were revealed to me only after they had been made final. Without any substantive input from minority citizens in Tarrant County or from their elected representative, Senate District 10 was converted from a majority minority district where Hispanics and African Americans could elect their candidate of choice to a majority Anglo district

where the voice of minority voters would be silenced.

29. The map drawn by the Senate leadership and adopted by the Legislature reflects the lack of concern for the voting rights of minority citizens in Senate District 10 and an utter disrespect for the clear communities of interest within the district. Minority neighborhoods are deliberately targeted and broken apart in order to prevent them from maintaining the coalition that allowed them to elect their candidate of choice in 2008.

30. A number of important communities of interest in Tarrant County that have very large minority populations had remained together in a Senate district for generations. In the State's proposed map they have been ripped apart and attached to rural or exurban districts where they have little in common with residents of those districts and will have no electoral influence.

31. Fort Worth's historic Northside/Diamond Hill community is one of the oldest Hispanic communities in the region. It is a proud community of residential homes and commercial businesses lying northwest of downtown and south of NW Loop 820. This area is a vital mix of Fort Worth's western and Hispanic heritages. Under the State's plan this area is ripped from Senate District 10 and pulled apart from other urban communities with shared interests and attached to Senate

District 12, which is an exurban district based in predominately Anglo Denton County.

32. Southeast Fort Worth and the nearby suburbs of Forest Hill and Everman comprise the largest concentration of African American citizens in Tarrant County and the third largest in the State of Texas. The Hispanic population in this community is also large and growing. The area contains historic neighborhoods including Polytechnic Heights, Meadowbrook, Eastern Hills and others and has always enjoyed recognition as an important electoral base for candidates running for city-wide election. These communities were a large and critical part of the coalition that elected me as the candidate of choice in 2008. Under the State's plan, the southeast Fort Worth, Forest Hill and Everman areas are pulled from Senate District 10 and made a small urban appendage to rural based Senate District 22 which is anchored in Waco and extends more than 100 miles to the south.

33. There are simply no mutual interests between this part of Tarrant County and any part of rural Senate District 22. In fact, the current incumbent Senator in District 22, Brian Birdwell, is a leader in the effort to repeal in-state tuition for undocumented students. Senator Birdwell's position on this issue may reflect the interests of rural voters in the base of Senate District 22, but his views are in direct conflict with the concerns and the

interests of southeast Fort Worth, Forest Hill and Everman.

34. The Riverside community is located just to the northeast of downtown and has long been a racially diverse working class residential community with both large Hispanic and large African American populations. It has clear ties and common interests with the Northside and with southeast Fort Worth. Under the State's proposed plan, Riverside is left stranded in a majority Anglo District 10. Whereas the voters in Riverside were an important part of the effective minority coalition in current District 10, under the State's plan, their votes will be overwhelmed by the Anglo majority.

35. The Senate redistricting plan adopted by the State is a brutal example of State leaders using an intentionally discriminatory process to block the constructive participation of minority citizens and their elected leaders and to produce a map that overtly eliminates a minority opportunity district and badly reduces the electoral opportunities of minority citizens in Texas.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 24th day of October, 2011.

/s/
WENDY R. DAVIS

EXCERPTS FROM THE ORAL DEPOSITION OF DOUGLAS DAVIS

OCTOBER 18, 2011

* * *

A. I don't know.

Q. Well, you drew the amendment.

A. I don't remember. I mean, it was a three to

five precincts in Dallas County between the 5th and the 32nd, in the Lake Highlands area and in the Garland area, but I don't --

Q. You don't remember what motivated the amendment?

A. No.

Q. What the specifics were? Why they --- what was in those precincts?

A. No.

Q. You don't know --

A. I never knew.

Q. -- the potential opponent?

A. No. I never knew any of that.

Q. You didn't ask?

A. No. It didn't matter to me.

Q. And who represents District 5 in the Congress?

A. 5 is Congressman Hensarling.

Q. And District 32?

A. Congressman Sessions.

Q. And they're both Anglo Republicans?

A. Yes, sir.

Q. When you were drawing the map for the State Senate, is it accurate to say that your target audience, so to speak, was the Senators themselves?

A. Yes, sir.

Q. And why is that?

A. That's who votes on the map.

Q. Now, you -- there was some testimony that you gave in your prior deposition. I'm going to read it so that there's no -- it says -- and this is your answer on Page 13 to 14. "Sometimes you're working primarily on legal ideas, legal concepts. Other times you're working with massaging members or it's just, it all kind of comes together in what is a map." I want to focus on the massaging members part. Okay? What does that mean to you? What were you referring to when you said sometimes you're just massaging members when you're working on a plan?

A. Well, you're communicating. And if a particular county is important to a particular Senator, and that helps you cross the threshold or gets you a step closer to their supporting the product, and all things being equal, the affected other member who may have that county does not mind, you're massaging two members at the same time.

Q. And that's just the way the process works is you, since you have a redistricting plan that you're trying to develop and it's going to affect those members, you have to communicate with those members along the way to get their likes, dislikes, agreements,

disagreements, if you're going to get a map passed, correct?

A. You need the requisite number of them, sure, yes, to pass it.

Q. And part of that process is communicating with the Senators?

A. Absolutely.

Q. And one of the things that you also testified to, and again, read it on Page 13 is, "You know, my role was to help Senator Seliger and advise him on several matters. You know, obviously, you've got the one-person, one-vote, all the legal requirements of the Voting Rights Act, Sections 5 and Sections 2, and then you've got the zero deviation. You've got the policy that the legislature has, you know, tried to keep communities of interest, so the traditional redistricting principles." And the answer continues on to talk about making sure that the votes are there, that the legislature will actually pass the map. What do you mean by "communities of interest" in that answer?

A. Well, the generic communities of interest traditional redistricting principle.

Q. What is that?

A. They're self-identified. They're different in different parts of the state. And you rely on boots on

the ground many times, if you're not fully familiar with the area, to have folks help -- help you identify communities of interest. I've never seen a set definition of what a community -- it could be a

church, it could be a historical district or whatever, could be a city, group of cities.

Q. Could it be a neighborhood?

A. Sure.

Q. Could it be an area, a geographic area that Shares common socioeconomic condition?

A. Some people may consider it, sure.

Q. Do you?

A. Some people may. It -- I'm not defining what the community of interest is.

Q. Right. And I'm not asking you to. What I'm asking you is: Is it possible in your mind for a community of interest to be an area where people are of the same socioeconomic condition? Could that constitute a community of interest?

A. Certainly, it could.

Q. Okay.

A. Could be a group of Dallas Cowboy fans, Redskin fans. It's just self-identified.

Q. By the people themselves?

A. Sure.

Q. The people in the community of interest themselves?

A. Sure.

Q. Did you try to keep communities of interest together in drawing the Senate map?

A. Largely.

Q. You did?

A. Yes.

Q. And how did you do that with regard to Senate District 10?

A. You know, the biggest community of interest in District 10 is the City of Fort Worth. I believe it's the 17th largest city in the United States. And in drawing District 10, I think we added 110,000 more citizens from the City of Fort Worth.

Q. And did you take any out?

A. Out of the city or out of District 10?

Q. Out of District 10?

A. Absolutely, I did.

Q. So you added people in from Fort Worth but you also took some people out from Fort Worth?

A. Certainly.

Q. So if the community of interest -- is that the only community of interest that's in Senate District 10?

A. I couldn't tell you -- no, that's not the only. I don't know what others there are. There are other mid cities in there. North Richland Hills is in there. Parts of Hurst and Euless. Bedford appears to be in there. I don't have the cities in front of me, Gerry, but there are suburban areas in there. There's a neighborhood in Fort Worth called Benbrook Lake; that's in there. So there's just downtown Fort Worth is certainly a community; that's in there.

Q. What about Southeast Fort Worth?

A. That is not in there.

Q. Is that a community of interest?

A. Sure. Yes.

Q. It's the third largest Black area in the state of Texas, correct?

A. I don't know.

Q. Behind Houston and Dallas?

A. I don't know.

Q. You don't know that?

A. No, sir.

Q. You've listed some of the communities of interest, and I didn't mean to interrupt you. Besides the cities that you've named, small cities, large cities, in the case of Fort Worth, are there any other communities of interest within the benchmark Senate District 10 that you recognized?

A. Within benchmark 10?

Q. Correct.

A. Well, in benchmark 10, I believe Southeast Fort Worth, Everman and Forest Hills are all in District 10, and I believe North Fort Worth around the stockyards is in District 10.

Q. And under the -- any other communities of interest that are in benchmark Senate District 10 aside from these four?

A. I don't know. I'm sure there are. There's schools in there. There's school districts in there. There's many, many communities of interest in there. So, yes.

Q. Under the enacted map, which was S-148, where is -- what district is Southeast Fort Worth in, the neighborhood of Southeast Fort Worth?

A. The 22nd.

Q. And the 22nd now runs south all the way past Waco, correct?

A. Yes, sir.

Q. And is it your testimony that that community of interest in Southeast Fort Worth shares a commonalty of interest with people in Falls County and McLullen County?

A. It's McLennan.

Q. McLennan.

A. But no, I don't believe I said that that community of interest has that. No, I didn't say that.

Q. Okay. So they don't share a commonality of interest?

A. I don't know whether they do or they don't. They -- the process of the map is instructive in answering this, and because of the way Fort Worth -- because of the way western Texas was short on population, Coryell County, which is in the 22nd District under the benchmark, had to go under the 24th District. That left the 22nd District roughly a hundred thousand people short. The 22nd District borders Dallas, and I couldn't get a hundred thousand people from Senator West because I was trying to keep an eye on his Black voting age population percentages.

Q. You could have pulled people out who weren't Black?

A. I would have had a hard time getting to them but because of geography, that's the truth of the matter. But regardless, the legislature made a decision not to.

Q. And -- are we just about there?

MS. JORDAN: Can we take a break?

MR HEBERT. Sure we'll take a break.

Okay.

Recess taken from 9:52 a.m. to10:05 a.m.)

Q. (BY MR HEBERT) When we broke, we were talking about the communities of interest in Senate District 10, and one of the areas we talked about was Southeast Fort Worth in benchmark Senate District 10. What do you understand the community of interest to be in Southeast Fort Worth?

A. Well, the Southeast Fort Worth, Everman and Forest Hills are the three historically predominantly African-American neighborhoods in Fort Worth.

Q. And under the -- and all three of those were in Senate District 10 under the benchmark map, correct?

A. Correct. I believe. I think that's true.

Q. Well, I -- I don't have any reason to question it. In fact, I know it to be true. So in North Fort Worth, what is that -- how would you describe that community of interest around the Stockyard area?

A. It's around the Stockyard north of the Trinity River. I think it's highly Latino.

Q. Right. And where does the highly Latino community of interest around the Stockyard go under the enacted map, which district?

A. The 12th District.

Q. 12th. Okay. And where does Everman go?

A. 22nd.

Q. And where does Forest Hills go?

A. 22nd.

Q. And the 22nd District is the one that runs down to Falls County, correct?

A. Correct.

Q. All right. And that's a predominantly Anglo district?

A. I presume. I -- sure. I don't know what you mean by "predominantly," but it's not highly minority.

Q. The statistics will speak for themselves.

A. Sure. Absolutely.

Q. I'll come back to that in a minute. With regard to Senate District 10, that district in the benchmark map was only 23,118 people over the ideal. Do you remember that?

A. I believe you.

Q. And that means it was only 2.85 percent over the ideal population. Does that sound correct to you?

MS. JORDAN: Object to the form of thequestion.

A. If that's what the statistics bear out, I'm --I'm fine with that premise.

Q. (BY MR. HEBERT) And I'm not -- these are one-person, one-vote questions. You understand?

A. Sure.

Q. I'm not asking about Voting Rights Act --

A. No, I understand.

Q. -- opportunity districts.

A. Okay.

Q. So -- and what's your understanding of how -- what the population deviation can be in a legislative plan to be constitutionally permissible?

A. Well, so long as -- as we're not using it, the deviation systematically under that new case out of Georgia, which we were a little concerned about, whose name is -- escapes me -- it's 10 percent safe harbor.

Q. Okay. And so districts had to be within a plus 5 or minus 5 overall range of deviation to be constitutionally, presumptively constitutional under the one-person, one-vote?

A. Well, the range needs to be 10. It doesn't have to be plus 5 or minus 5, but the range can be 10.

Q. And District 10 at 2.85 percent over the ideal didn't have to change really at all to comply with the one-person, one-vote requirement, did it?

A. That's accurate.

Q. Okay. Did anyone in the legislature, Senate or House, or did anyone who had any involvement in preparing the Senate map ever provide you with a

working definition of what is meant by "community of interest"?

A. No.

Q. And did you ever come up with one yourself?

A. No, sir.

Q. Okay.

A. Other than what I gave you before.

Q. Right. So let's -- I want to focus now on the process by which the plan developed. The process for developing the Senate map in particular. There was a bill, kind of what I would call a "shell bill" referred to the redistricting committee on January 31st, 2011. Does that sound correct to you?

A. I -- if that's -- I don't doubt that that's true.

Q. And typically, what kind of a bill is it that

22 goes to the committee first? Is it just the current map goes to the committee and then you amend it?

A. It's different in different sessions, but sometimes it just could be the current map. I don't * * *

DECLARATION OF WEBB COUNTY SENATOR JUDITH ZAFFIRINI

Pursuant to 28 U.S.C. 1746, I Judith Zaffirini declares that:

1. My name is Judith Zaffirini, and I am a Hispanic American resident of Laredo, Texas, who has served as a Texas State Senator representing District 21 since 1987.

2. I have served on the Senate Redistricting Committee during every legislative session during which legislative districts have been redrawn since I began my service in the Senate. With nearly 25 years in the Texas Senate representing a Hispanic opportunity district and with extensive experience on redistricting matters. I am able to comment with authority on the redistricting process, as well as on the state's adopted Senate plan.

3. The redistricting process during the 2011 Legislative Session was the least collaborative and most exclusive of any I have experienced during my time in the Senate.

4. The public at large was not given adequate opportunity to comment on the plans being considered by the Texas Legislature. No public hearings on the proposed maps were held outside the State Capitol in Austin. The single public hearing conducted was held with minimal public notice. Citizens from around our very large state, particularly those on our southern border and in other areas far from Austin, were not given adequate notice to

arrange travel to Austin, much less time to review adequately and to develop comments about the proposed plan.

5. Even as a member of the Redistricting Committee, I was essentially kept in the dark until the map was drawn and released. The boundaries of my own district were not provided to me until that time.

6. At the same time, many senators who represent majority Anglo districts were given open and continued access to the redistricting process for weeks leading up to the formal consideration of the map. These Anglo senators were able to offer their views and argue their positions extensively, while those of us who represent minority opportunity districts were not allowed the access needed to advocate effectively in behalf of our constituents.

7. My opposition to the intentionally discriminatory process employed by state leaders was expressed clearly during committee consideration and Senate consideration of redistricting plans. As a member of the Redistricting Committee, I offered alternative plans to the state's proposal, voted for alternative proposals on the Senate floor, and I co-signed a letter to our Committee Chair, protesting both the process and the adopted plan . A copy of this letter is attached.

8. While many senators who represent minority opportunity districts voted in support of the

state's plan on final consideration, this vote should not be interpreted as support for the overall plan or the process used to develop and adopt it. Failure of the Senate to adopt a redistricting plan would have resulted in a map drawn by the all-Anglo and highly partisan Legislative Redistricting Board. My colleagues and I had legitimate concerns that any plan adopted by the Legislative Redistricting Board would do even greater damage to minority Texans than the flawed plan approved by the Legislature. That is the only reason I voted for it,

9. All 12 of the Texas senators who represent minority opportunity districts recognize that the state's adopted plan is retrogressive due to the conversion of Fort Worth-based District 10 from a majority minority district in which Hispanics and African Americans can vote in coalition to elect their candidate of choice into a majority Anglo district that eliminates meaningful electoral opportunity for minority voters. All 12 minority opportunity district members supported an alternative plan that retained District 10 as a majority minority district, and all 12 signed a statement entered into the official Senate record detailing our objections to the discriminatory redistricting process. A copy of this statement is attached.

10. The redistricting process employed and the map adopted y Texas fail Hispanics and African Americans in our state. Minority Texans must now rely upon our federal courts to enforce diligently the Voting Rights Act to

protect the voting opportunity that would be lost if the state's plan is allowed to go into effect.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this **19th** day of October, 2011.

/s/
JUDITH ZAFFIRINI

DECLARATION OF TARRANT COUNTY SENATOR ROYCE WEST

Pursuant to 28 U.S.C. 1746, I, Royce West declare that:

1. My name is Royce West, and I am an African American resident of Dallas, Texas and have served as a Texas State Senator representing District 23 since 1993. My district includes most of the African American neighborhoods in Dallas County and many Hispanic neighborhoods as well. I served on the Senate Redistricting Committee during the recent Texas legislative session, so I bring first-hand knowledge to the process used and the plan adopted by the Legislature when it redrew Senate districts. Further, as one of only two African American Texas State Senators and one of only 12 Senators who represent minority opportunity districts, I have experience and insight on the attitudes and concerns of minority citizens, not only in my own district but throughout the north Texas region and statewide.

2. All twelve of the Texas Senators who represent minority opportunity districts in Texas objected to the State's redrawn District 10. We recognized that the reconfiguration of District 10 eliminated the ability of African American and Hispanic voters in the district to elect their candidate of choice. In fact, all twelve minority opportunity district Senators submitted a letter for the Senate record to express our objections to the configuration of

Senate District 10 and the process used to adopt the plan.

3. Many Senators who represent Anglo-controlled districts enjoyed ongoing participation in developing the Senate plan. Other Senators – most of whom represent minority opportunity districts – were not allowed to see the final configuration of even their own districts in isolation, much less in the broader context of the map – until less than 2 days before it was presented in committee.
4. The product of this flawed process was a flawed and discriminatory map. State leaders intended to destroy District 10 as a minority opportunity district so went about creating a process to prevent the public or fair-minded Legislators with the tools or opportunity to object. Their actions have left the protection of minority voters in Texas and the enforcement of the Voting Rights Act up to the Federal Courts.
5. In 2008, Senate District 10 minority voters demonstrated their ability to elect their candidate of choice in the election of Wendy Davis. I remain in close contact with many minority leaders in Fort Worth and Tarrant County. The decision by both African American and Hispanic leaders to make the Senate District 10 race the top priority in 2008 was widely known.
6. In 2008, Minority leaders in Tarrant County and throughout the North Texas region realized that the minority population in

Senate District 10 was of sufficient size, possessed the organizational ability and would devote the physical and financial resources to elect their candidate of choice in Senate District 10.

7. Minority leaders had good reason for their confidence and optimism. When the 2001 Texas Senate redistricting plan was submitted to the Department of Justice for preclearance, the State justified its configuration of District 10 by predicting that the minority community in Fort Worth could grow and unite to elect their candidate of choice. Minority leaders throughout our region watched the election returns and demographic changes in District 10 throughout the decade. There was clear recognition that 2008 was the tipping point for minority voters in District 10 to elect a State Senator of their choosing.
8. Wendy Davis was recruited and elected by a coalition of African American and Hispanic voters. Her election in 2008 was a product of near unanimous support from minority voters. Their support overcame the large majority of Anglo voters who opposed Davis.
9. As a result, it is the 2008 State Senate that should be used to determine whether or not District 10 provides minority voters the opportunity to elect their candidate of choice. Using any other race, whether local or the reconstituted results of statewide elections, provides an inaccurate measure of minority voting strength in the District 10.

10. State leaders recognized that minority voters in District 10 could elect their candidate of choice. Rather than recruit and fund a Republican candidate to compete for and win the support of minority voters, State leaders dismantled the district and destroyed the ability of minority voters to elect their candidate of choice.
11. While I represent a Dallas-based district, I am very familiar with the geography, demography and electoral history of our entire region. The careful targeting and separation of minority neighborhoods by State leaders in Senate District 10 discriminates against minority voters.
12. The southeast Fort Worth neighborhoods in Senate District 10 make up the third largest concentration of African American voters in Texas. Under the State's plan, these voters are cut from Senate District 10 and attached to District 22, which is a rural-based Anglo-controlled district that extends over 100 miles south of Fort Worth.
13. The historic Northside of Fort Worth is a long-established but still growing Hispanic community. It too was cut from Senate District 10 and then attached to District 12, which is based in exurban Denton County and is controlled by Anglo voters.
14. Other growing minority neighborhoods in District 10 such as those in south Arlington and in south Fort Worth were either removed from District 10 and added to an adjacent Anglo controlled district or left stranded and

an ineffective community within the deliberately diminished State's District 10.

15. The State's proposed District 10 is a deliberate attempt to undermine and destroy the ability of African Americans and Hispanics in Tarrant County to elect their candidate of choice. The district can be redrawn and restored as a majority minority district where African Americans and Hispanics can elect their candidate of choice without negatively impacting the effectiveness of any other minority district or unnecessarily disrupting any other North Texas district.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this **20th** day of October, 2011.

/s/

ROYCE WEST

DECLARATION OF HARRIS COUNTY SENATOR RODNEY ELLIS

Pursuant to 28 U.S.C. 1746, I, Rodney Ellis declare that:

1. My name is Rodney Ellis, and I am an African American resident of Houston, Texas who has served as a Texas State Senator representing District 13 since 1991. Prior to my election to the State Senate, I served on the Houston City Council and prior to that served as Chief of Staff to Congressman Mickey Leland. Throughout my long history in public service, I have worked hard and successfully to understand the needs and concerns of minority voters in my region and throughout Texas.

2. Texas Senate districts have been redrawn three times since I was first elected to the State Senate in 1990. In my view, the process that produced the currently pending 2011 map was badly flawed and purposefully discriminatory.

3. The discriminatory process employed by State leaders resulted in a map that reduced the number of majority minority districts where African American and Hispanic voters can elect their candidate of choice from 12 to 11. Specifically, the State's plan converts Fort Worth-based District 10 from a majority minority district where African American and Hispanic voters form an effective coalition to elect their candidate of choice to one that is

majority Anglo and would be controlled by Anglo voters.

4. A number of Senators representing minority opportunity districts voted in support of the State's plan on final passage. It is important to note, however, that those voting for the plan did so to avoid the near certainty that the map would be even worse if the Senate deadlocked and the plan was ultimately drawn by the Texas Legislative Redistricting Board.

5. Under the Texas Constitution, if the Legislature fails to adopt a Senate redistricting plan, the responsibility falls to a board made up of the Lt. Governor, Speaker of the House, State Attorney General, State Comptroller and State Land Commissioner. Many Senators feared, with justification, that this harshly partisan body of statewide elected officials would dismantle not only District 10 but other minority opportunity districts as well.

6. It is important to note that all 12 Senators who represent minority opportunity districts voted in support of the alternative Senate plan offered by Wendy Davis that was tabled by the Anglo majority. Moreover, every minority opportunity district Senator joined in signing an official statement entered into the Senate record expressing strong opposition to the discriminatory process used and the retrogressive map adopted (attached). Without a majority vote and burdened by a

discriminatory process, Senators are looking to the enforcement of the Voting Rights Act to restore the minority voting opportunity destroyed in the State's plan.

7. On July 5, 2011 shortly after the adoption of the pending Senate plan, I wrote to Attorney General Eric Holder to express my opposition to the retrogressive State Senate plan and the discriminatory process employed (attached).

8. During consideration of the Senate plan, a number of Senators representing Anglo districts were allowed full participation in the configuration of not only their own districts but their regions and the state overall. Meanwhile, Senators representing minority opportunity districts were shut out from the process. Many were not even allowed to view the boundaries of their own districts much less the layout of the entire map until less than 48 hours before the plan was presented and adopted by the Redistricting Committee. The exclusive process denied Texas minority voters, and those of us who represent them in the Senate, from fair and equal participation in a crucial electoral decision.

9. The State's flawed and discriminatory process resulted in a map that dismantled District 10 as a majority minority district in which African American and Hispanic voters had reached sufficient size, strength and unity to elect their candidate of choice. Their ability to elect a candidate of their choice was demonstrated in 2008 when African American

and Hispanic voters mounted a strong, vigorous, unified and successful campaign to elect Wendy Davis to the State Senate.

10. State leaders were clearly determined to prevent minority voters in District 10 from demonstrating their ability to elect the candidate of their choice in future elections. The State's adopted map carefully targets and removes African American and Hispanic neighborhoods from District 10 – attaching some to a rural district with no community of interests with Fort Worth urban voters, and attaching others to suburban and exurban districts controlled by Anglo voters.

11. Texas has a long and sad history of preventing minority voters from exercising their right to participate in the political process. Certainly Texas Senators who represent minority opportunity districts in Texas were prevented from exercising their right to defend and protect minority citizens during the 2011 redistricting process.

12. Minority voters in District 10, who had realized and exercised their opportunity to elect their candidate of choice in 2008, have had that opportunity to elect taken from them by the State's pending redistricting plan.

13. Such an overtly discriminatory process and such a cynical and deliberate retrogression of minority voting opportunity in District 10 are exactly the type of actions the Voting Rights Act is in place to prevent.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this **19th** day of October, 2011.

/s/
RODNEY ELLIS

COMMITTEES
Education
International Relations & Trade
Transportation & Homeland Security
Veteran Affairs & Military Installations

The Senate of
The State of Texas

May 10, 2011

The Honorable Kel Seliger
P.O. Box 12068
Capitol Station
Austin, Texas 78711

Dear Chairman Seliger:

As you know, I represent Senate District 10, which includes virtually every minority neighborhood in the City of Fort Worth. Senate District 10 also includes a large part of the City of Arlington and other smaller communities where both the African American and Hispanic populations are growing rapidly. Southeast Fort Worth, which serves as the political core of Senate District 10, is the third largest concentration of African American residents in the State of Texas. The City of Fort Worth and Senate District 10 also include one of the largest concentrations of Hispanic Texans not located on or along the border.

As the elected representative of so many minority residents, I have a responsibility to support and defend their interests before the Legislature. In light of this, I want to express my grave concern that my constituents have not been allowed to fairly participate in the redistricting process and, as a

result, their rights under the US Voting Rights Act are being badly undermined.

The Senate Redistricting Committee has failed to adequately allow my constituents to provide comments or to be informed about the redistricting process or to offer views to the Legislature on the appropriate configuration of Senate Districts. The Redistricting Committee has not held any public hearings in the City of Fort Worth within any reasonable proximity of the minority neighborhoods in Senate District 10.

Moreover, I have not been provided information, access or input during important redistricting deliberations. By excluding my input as the elected representative from Senate District 10 during the deliberative process, you are excluding hundreds of thousands of minority residents in Senate District 10, thereby denying them their rights under the law.

Specifically, I asked to see maps being considered by you, your staff and apparently other Members on several occasions - most recently by direct request to you on Monday May 2nd, Tuesday May 3rd and Friday May 6th. Your committee clerk attended a meeting with me, yet intentionally failed to bring a map for me to review, in spite of my specific request that he do so. Your only visit to my office regarding this matter was late in the same day that I met with your committee clerk, which I understand you intended as a courtesy visit, but not one where you brought a map or were responding to my request to see a map. As it was late in the day on Friday, and as I had indicated to your committee clerk, I had already

departed for the airport to return to the district when you stopped in.

In the meantime, I am aware that repeated meetings have been held with other Members of the Senate and that particular attention is being paid to the Members of the Senate in North Texas who represent Anglo-controlled districts. Your committee clerk personally told me that lawyers are reviewing draft plans. Clearly, the redistricting process is moving forward without the input of those representing large minority communities in Texas. Your failure to provide minority constituents in Fort Worth and Tarrant County the same access and level of participation as Anglo constituents is a profound and unfair denial of important and legally protected rights.

Just today I was allowed to review an already completed and predetermined proposed SDI0 map that will be rolled out just hours from now in a Senate Redistricting Committee meeting which drastically alters the current coalition district and radically divides and undermines the minority counties of Tarrant County. This meeting does not represent any semblance of meaningful participation by me or the minority communities of Senate District 10.

As you know, I have provided both you and your committee clerk maps that I intend to formally offer as alternatives to the map that the committee will present which radically violates the protected coalition district and commits retrogression. Both of the proposed maps demonstrate that the large and concentrated minority population in North Texas can

support at least two effective minority opportunity Senate Districts in North Texas - Senate District 10 and Senate District 23 - and that failure to retain two effective minority voter controlled districts in a new Senate map will violate the Voting Rights Act. In addition, of course, should you ignore these proposals and the Legislature ultimately enacts a plan reducing the voting strength of minority citizens in Senate District 10, you will have knowingly and deliberately undermined the voting rights of minorities in our state.

Please know that I remain prepared to work constructively with you to ensure the voting rights of the minority citizens I represent. We both have a legal and moral responsibility to head off a partisan redistricting plan that would cynically rob entire communities of their voting strength.

Sincerely,

/s/
Honorable Wendy Davis
Texas Senate, District 10

Official Statement from Democratic Senators

May 17, 2011

For the record regarding CSSB 31:

Each of us represent majority minority districts where minority citizens have demonstrated the ability to elect their candidate of choice. We recognize and accept our special responsibility to protect the voting rights of the minority citizens we represent as well as minority citizens in every part of Texas. In light of this, we want to make clear that any vote by any of us to suspend rules or a vote in support of CSSB 31, either on passage to engrossment or on final passage, should not be interpreted as endorsement of the process used to develop the plan or the configuration of the plan in all parts of our state.

Some Senators enjoyed ongoing participation as the plan was developed. They were allowed to view and respond to draft proposals throughout the process. Other Senators - many of whom represent minority opportunity districts - were not allowed to see even their own districts in isolation, much less the broader context of the map - until less than 48 hours before it was laid out in committee. The concerns of these Senators and the voters they represent were neither solicited nor given fair consideration.

More specifically, we believe that the map violates the Voting Rights Act in its configuration of Senate District 10 in north Texas. The current District 10 has evolved over the last decade, as the State predicted when it sought Voting Rights Act

approval for the district back in 2001, into a majority minority district where minority citizens have demonstrated the ability to elect their candidate of choice. Under the new plan, the voting strength of minority citizens in District 10 is rolled back dramatically, and Anglos are returned as a strong controlling majority in the district. Not only would minority voters in SD10 no longer have an effective opportunity to elect a candidate in the district, they would have no voice at all. There are reasonable alternatives that recognize the voting strength of racial/ethnic minorities without retrogressing their ability to effectively participate in the political process.

The concomitant effect of retrogression in District 10 i$ that there is also retrogression of minority voting strength statewide. Under the current statewide senate map, 15 districts have majority minority populations, and in 12 of these districts, including District 10, minority citizens have demonstrated the ability to elect their candidate of choice. Under the proposed senate plan, only 12 districts would have majority minority populations and only 10 would provide minority citizens the opportunity to elect their candidate of choice.

We all know that most of the business of the Senate is conducted under a two-thirds rule, where at least 21 of the 31 Members must agree to allow debate on a bill before it can be considered. By reconfiguring District 10 as an Anglo controlled district, the ability of Senators who represent minority opportunity districts to form a coalition to block retrogressive provisions harmful to our

constituents would be reduced. At the same time, the clout of Senators representing Anglo controlled districts would be enhanced.

We support the decision to retain Senate District 14 as an effective coalition district where minorities can combine with like-minded Anglos to elect their candidate of choice. We are disappointed, though, that the overall minority percentage in the district was reduced and that some minority neighborhoods were unnecessarily separated into an adjoining district that runs a great distance through Texas, creating a district that is not compact and where the constituents have disparate interests.

Unfortunately, Texas has a long history of denying minority citizens their rights under the Voting Rights Act. We are saddened that any support for this plan must be qualified by our concern that this history could be extended by the process used to construct the plan and by the racially discriminatory purpose and impact of the plan on minorities in parts of our state.

Sincerely,

/s/Wendy Davis, SD-10	/s/Rodney Ellis, SD-13
/s/Mario Gallegos, SD-6	/s/Juan "Chuy" Hinojosa, SD-20
/s/Eddie Lucio Jr., SD-27	/s/José Rodríguez, SD-29
/s/Carlos Uresti, SD-19	/s/Letica Van de Putte, SD-26
/s/Kirk Watson, SD-14	/s/Royce West, SD-23
/s/John Witmire, SD-15	/s/Judith Zaffirini, SD-21

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. SA-11-CV-788

WENDY DAVIS, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

Defendants.

FILED: 11/23/11
Document 90

DEFENDANTS' MOTION TO STAY IMPLEMENTATION OF INTERIM SENATE REDISTRICTING PLAN PENDING APPEAL

Defendants Rick Perry, in his official capacity as Governor, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas (collectively, the "State Defendants") respectfully ask the Court to stay pending appeal its order dated November 23, 2011, which directs implementation of an interim redistricting plan for the Texas Senate. State Defendants also request further relief described below.

ARGUMENT AND AUTHORITIES

A stay pending appeal is entirely appropriate pending expeditious appellate review of important issues such as those presented by this Court's interim order. Indeed, the Supreme Court has itself

routinely granted stays of interim redistricting plans pending its consideration of orders similar to this Court's interim order. *McDaniel v. Sanchez*, 448 U.S. 1318 (1980) (Powell, J., in chambers); *Bullock v. Weiser*, 404 U.S. 1065 (1972) (stay order), *rev'd on substantive grounds sub nom. White v. Weiser*, 412 U.S. 783, 789 (1973); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970) (stay order), *rev'd on substantive grounds and remanded*, 403 U.S. 124 (1971).

This Court's interim order regarding the Texas Senate is akin to a preliminary injunction, and a preliminary injunction of any sort is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 676 (2008). A court will stay its injunction pending appeal where, as here, the moving party can demonstrate: (1) that it is likely to succeed on the merits; (2) that it would suffer irreparable injury if the stay were not granted; (3) that granting the stay would not substantially harm the other parties; and (4) that granting the stay would serve the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Under *Ruiz v. Estelle*, that test is flexible, and a movant can obtain a stay pending appeal by showing "a substantial case on the merits when a serious legal question is involved" and by showing that "the balance of the equities weighs heavily in favor of granting the stay." 650 F.2d 555, 556 (5th Cir. 1981). *See also Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) ("The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay.").

First, this Court's interim order blatantly violates *Upham v. Seamon*, and will likely be

reversed on appeal. *Upham* requires a district court enacting interim redistricting plans to defer to legislatively enacted maps unless the court is required to remedy a constitutional or statutory violation. Nevertheless, this Court's interim redistricting plan for the Texas Senate alters districts enacted by the Texas Legislature despite the Court's failure to identify a legal deficiency in the legislatively enacted plan.

Second, implementation of the interim redistricting plan will cause substantial and irreparable harm to the State of Texas and its citizens. Specifically, even the temporary invalidation of a statute irreparably injures the State; by itself, it constitutes sufficient grounds for a stay. *See New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a Court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."); *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people . . . is enjoined."). But more troubling is the injury that will result from allowing the 2012 Texas Senate elections to go forward on improperly constructed redistricting plan. Once done, the harm caused to the State and its citizens by legally flawed elections cannot be undone even if the elections are later invalidated, because the results of the election would be irreversible. *See Lucas v. Townsend*, 486 U.S. 1301, 1304 (Kennedy, J., in chambers).

Third, the injuries caused to the State and its citizens strongly outweigh any harm that would be caused to the plaintiffs. Plaintiffs suffer little—if any harm—by a stay of the Court's interim redistricting plans pending appeal. In contrast, the harm caused to the state and all its citizens when an election takes place under a legally flawed redistricting plan is both substantial and irreversible.

Finally, the public interest is clearly best served by a stay of this Court's interim redistricting plans.

I. STATE DEFENDANTS WILL LIKELY PREVAIL ON THE MERITS IN THE UNITED STATES SUPREME COURT.

The Court's interim plan for the Senate ignores the legislatively enacted map in Senate district 10 in Tarrant County without any finding of any violation of federal law. The Court does this despite acknowledging the fact that the *Department of Justice* lodged no objections at all to the legislatively enacted Senate map. The Court agreed with the State that the heavily Democrat "coalition district" requested by the plaintiffs should not be drawn. Nevertheless, the Court thwarted the will of the people of Texas by changing five Senate districts without articulating any reason for its actions other than that Section 5 preclearance has not yet been obtained. But the lack of preclearance is only because one Senator objected to the map as an intervenor in the Section 5 court. This Court's apparent deference to one Senator's unproven allegations ignores the fact that 29 out of 31 Senators voted for the map. The phrase "tyranny of the minority" takes on new meaning in the Court's

plan. All that must be done to defeat democracy is for one Senator, whose district is drawn in a way she dislikes, to file a lawsuit at the eleventh hour claiming a violation of the Voting Rights Act—even when no one else, including the Department of Justice, believes there is a violation. Under the Court's reasoning, because that lone dissenter has held up Section 5 preclearance, the State's map must be judicially redrawn. The Court should not have fallen prey to this tactic. It should stay its order to allow the Supreme Court to consider this error.

The Court gives no reasoned justification for its actions, but explains, "Thus, insofar as the Court is utilizing the Legislature's enacted map, it is using the portions of the map to which no party or the DOJ has objected in order not to disturb legislative choices any more than necessary." Yet the Court provides no legal finding, preliminary or otherwise, of any reason to disturb Senate District 10. In reality, there is no reason to disturb the legislature's valid decision with respect to this district. The Court simply assumes a Section 5 violation where none exists, despite the DOJ's decision that nothing in the Senate map violates Section 5. If this Court does not immediately remedy this error, it should stay its decision.

The Supreme Court has unambiguously prohibited lower courts from disregarding the legislature's intention in an enacted redistricting plan unless it is necessary to avoid a constitutional or statutory violation:

> Whenever a district court is faced with entering an interim reapportionment order

> that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." . . . An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. Thus, in the absence of a finding that the . . . reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.

Upham v. Seamon, 456 U.S. 37, 43 (1982) (*per curiam*) (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)); *cf. White v. Weiser*, 412 U.S. 783, 797 (1973) (holding that the district court erred because "in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state proposed plan"). When a federal court is forced to order an interim redistricting plan, it must respect the state legislature's policy judgments unless the plan has been shown to violate the law.

In sum, the Texas Senate interim redistricting plan undermines the Legislature's policy choices by altering five Senate districts that do not violate the Voting Rights Act. This conflicts with the Supreme Court's holding that an interim plan must "reconcil[e] the requirements of the Constitution with the goals of state political policy." *Upham*, 456 U.S. at 43 (quoting *Connor*, 431 U.S. at 414). As a

result, the State is likely to succeed on appeal to the Supreme Court.

II. STATE DEFENDANTS WILL SUFFER IRREPARABLE INJURY ABSENT A STAY.

The immediate implementation of the interim redistricting plan would prevent the State from enforcing a law duly enacted by the Texas Legislature. Senate Bill 31 passed with overwhelming majorities in both houses of the Legislature. Blocking this legislation, as the Court has done, unquestionably causes irreparable harm to the State, its officers, and most importantly its citizens. As the Supreme Court has stated, even the temporary invalidation of a state statute irreparably injures the government and itself constitutes sufficient grounds to enter a stay. *See New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a Court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."); *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people . . . is enjoined.").

Beyond the harm inherent in blocking implementation of state law, a special harm arises when an election is permitted to go forward based on an illegal, court-drawn redistricting plan. As Judge Smith recognized in his dissent related to the Texas House maps, if a stay is not granted to allow for appellate review of this Court's decisions, this case will essentially be over. If that happens, the State's

elections will be conducted on improper maps. The candidate filing period will begin under the Court's legally flawed, unreviewed map on Monday, November 28, and absent a stay from this Court or the Supreme Court there will soon be little alternative other than to continue with elections on an improper map. The irreparable harm such a result would inflict on our democratic process and on all Texas voters requires no explanation. For these reasons, the Supreme Court has frequently stayed unlawful court-drawn plans in similar instances. *McDaniel v. Sanchez*, 448 U.S. 1318 (1980) (Powell, J., in chambers); *Bullock v. Weiser*, 404 U.S. 1065 (1972) (stay pending appeal in *White v. Weiser*, 412 U.S. 783, 789 (1973)); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970) (stay order).

III. STATE DEFENDANTS' IRREPARABLE INJURIES STRONGLY OUTWEIGH ANY HARM TO PLAINTIFFS.

Plaintiffs will suffer little harm should the Court stay its orders implementing the interim redistricting plans pending appeal. Any party that benefits from an improper interim redistricting map suffers no cognizable injury from a stay pending appellate review. In any case, Plaintiffs' right to vote and to participate equally in the political process will not be abridged by a mere delay in the final determination of electoral districts for the 2010 election. By contrast, refusing to issue a stay of an improper interim map will cause irreparable harm to the people of Texas. The election of an entirely new legislature under a plan other than the one enacted by the duly elected representatives of this State would be irreversible. *See Lucas v. Townsend*, 486

U.S. 1301, 1304 (Kennedy, J., in chambers) ("Even if the election is subsequently invalidated, the effect on both the applicants and respondents likely would be most disruptive.").

IV. A STAY PENDING APPEAL IS—BY DEFINITION—IN THE PUBLIC INTEREST.

A stay of the preliminary injunction would allow State Defendants to carry out the statutory policy of the Legislature, which "is in itself a declaration of the public interest which should be persuasive." *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937); *Illinois Bell Telephone Co. v. WorldCom Technologies, Inc.*, 157 F.3d 500, 503 (7th Cir. 1998) ("When the opposing party is the representative of the political branches of a government the court must consider that all judicial interference with a public program has the cost of diminishing the scope of democratic governance.").

CONCLUSION & PRAYER

State Defendants respectfully request that the Court stay its order imposing an interim redistricting plan for the Texas Senate pending appeal. State Defendants also request that the Court issue an immediate administrative stay of its preliminary injunction order to allow time for orderly litigation of this request for a stay pending appeal both before this Court, and if this Court were to deny the stay, before the United States Supreme Court pursuant to 28 U.S.C. § 1253.

The State further requests that this Court stay the candidate filing and qualification deadlines for

the Texas Senate (as prescribed by State law and modified by order of this Court).

Further, the State recognizes that in order to preserve the Supreme Court's jurisdiction and provide the Supreme Court with adequate time to correct this Court's errors, it may become necessary to delay the primary elections for the Texas Senate. While all unaffected primary elections will continue as scheduled on March 6, 2012, the State is prepared to delay its Texas Senate primary elections in order to ensure that it is not forced to conduct elections using a legally flawed map. By delaying the primary elections pending appeal—if that should become necessary—the State can ensure that its citizens will have the opportunity to vote in elections under redistricting plans determined to be lawful by the U.S. Supreme Court.

To that end, the State requests any and all relief the Court deems necessary to effectuate the Supreme Court's appellate jurisdiction, including but not limited to a stay of the primary election dates for the Texas Senate.

Dated: November 23, 2011

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 1:11-cv-01303

STATE OF TEXAS,

Plaintiff,

v.

UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States,

Defendants.

(RMC-TBG-BAH)
Three-Judge Court

Filed 11/08/11
Document 106

ORDER

Plaintiff State of Texas seeks summary judgment and a declaration that (1) the State's proposed redistricting plans for the U.S. House of Representatives, the Texas House of Representatives, and the Texas State Senate[1] neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority and otherwise fully comply with Section 5 of the

[1] Without challenge to the State's redistricting plan for the Texas State Board of Education, the Court gave preclearance to that plan by Order dated September 22, 2011.

Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c; and (2) that the State's redistricting plans for the U.S. House of Representatives, Texas House of Representatives, and Texas State Senate may be implemented without delay.

The three-judge panel appointed to hear the case received extensive briefing and held lengthy oral argument on November 2, 2011. If any one of the plans is not precleared by this Court Case 1:11-cv-01303-RMC-TBG-BAH Document 106 Filed 11/08/11 Page 1 of 2 at this stage in the proceedings, the District Court for the Western District of Texas must designate a substitute interim plan for the 2012 election cycle by the end of November.[2] *See Perez v. Texas*, No. 11-360, Am. Order [Dkt. # 391] (W. D. Tex. Oct. 4, 2011) (consolidated action). Therefore, the Court issues its Order promptly and will issue a memorandum opinion hereafter.

Having carefully considered the entire record and the parties' arguments, the Court finds and concludes that the State of Texas used an improper standard or methodology to determine which districts afford minority voters the ability to elect their preferred candidates of choice and that there are material issues of fact in dispute that prevent this Court from entering declaratory judgment that

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[2] On November 7, 2011, the District Court for the Western District of Texas issued an order modifying the election schedule in Texas and changing the date pursuant to which prospective candidates for office may first file an application for a place on the Primary Ballot to November 28, 2011. *See Perez v. Texas*, No. 11-360, Am. Order [Dkt. # 489] (W. D. Tex. Nov. 7, 2011) (consolidated action).

the three redistricting plans meet the requirements of Section 5 of the Voting Rights Act. *See* 42 U.S.C. 1973c.

Accordingly, it is hereby

ORDERED that the Motion for Summary Judgment[Dkt. # 41] is **DENIED**.

SO ORDERED.

Date: November 8, 2011

/s/
THOMAS B. GRIFFITH
United States Circuit Judge

/s/
ROSEMARY M. COLLYER
United States District Judge

/s/
BERYL A. HOWELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 1:11-cv-01303

STATE OF TEXAS,

Plaintiff,

v.

UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States,

Defendants.

(RMC-TBG-BAH)
Three-Judge Court

Filed 10/25/11
Document 79-2

UNITED STATES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS OPPOSITION TO PLAINTFF'S MOTION FOR SUMMARY JUDGMENT

The State of Texas has moved this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for entry of an order of summary judgment in its favor on its claims that the State's redistricting plans for the State's delegation to the United States Congress, the Texas House of Representatives, the Texas State Senate, and the Texas State Board of Education neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color,

or membership in a language minority group and otherwise fully comply with Section 5 of the Voting Rights Act ("VRA"), 42 U.S.C. § 1973c, and that such plans may be implemented without delay. *See generally* Benchmark and Proposed Maps (Ex. 1). As set forth below, Defendants United States and Eric H. Holder, Jr. (collectively "United States") oppose Plaintiff's Motion and submit that it should be denied.[1]

The proposed State House redistricting plan has a retrogressive effect because it provides minority voters with the ability to elect their preferred candidates of choice in 45 or 46 districts compared to the benchmark plan that provided minority voters with the ability to elect in 50 districts. The proposed Congressional redistricting plan has a retrogressive effect because, compared to the benchmark plan, it decreases the percentage of districts in the Congressional plan in which minority voters have the ability to elect and because under the proposed plan 479,704 fewer Hispanics will reside in districts in which they have an ability to elect a candidate of choice. Both plans were also

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[1] In its Answer to the Complaint (Docket No. 45), the United States admitted that Plaintiff is entitled to a declaratory judgment that the proposed redistricting plans for the State Board of Education ("SBOE") and State Senate each comply with Section 5, and averred that the Court will have to make its own determination as to whether these plans comply with Section 5 before they may be implemented. Answer ¶¶ 40, 46. A declaratory judgment in the State's favor has been entered with regard to the SBOE plan. The United States' response is directed only at the State's request for declaratory judgment with respect to the proposed plans for the Texas Congressional delegation and the State House.

adopted with a discriminatory purpose, and there are a substantial number of material facts in dispute with regard to both prongs of the Section 5 standard. Therefore, summary judgment is not appropriate regarding the House plan and Congressional plan.

I. STANDARD FOR SUMMARY JUDGMENT

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *accord Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). In deciding whether there is a genuine issue of material fact, the court must draw all justifiable inferences in the nonmoving party's favor and accept the nonmoving party's evidence as true. *Anderson*, 477 U.S. at 255. To determine which facts are "material," a court must look to the substantive law on which each claim rests. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A "genuine issue" is one whose resolution could establish an element of a claim or defense and, therefore, affect the outcome of the action. *Id.*

Moreover, courts have generally concluded that cases that involve questions of intent or motive are rarely appropriate for summary judgment as relevant evidence is often susceptible to different interpretations or inferences by the trier of fact. *Hunt v. Cromartie*, 526 U.S. 541, 552- 553 (1999); *accord, e.g., Poller v. Columbia Brad. Sys., Inc.*, 368 U.S. 464, 473 (1962); *Att'y Gen. v. Irish People Inc.*, 796 F.2d 520, 524 (D.C. Cir. 1986). In the redistricting context, assessing whether a

jurisdiction was racially or politically motivated is not a simple matter, but an inherently complex task requiring the court to perform a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Hunt*, 526 U.S. at 546 (citing *Miller v. Johnson*, 515 U.S. 900, 905 (1995)); *accord Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977); *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 488-90 (1997) (noting that in Section 5 cases involving discriminatory purpose questions, "courts should look to our decision in *Arlington Heights* for guidance").

II. ARGUMENT

A. To Obtain Judicial Preclearance under Section 5, the State Must Demonstrate that Its Proposed Redistricting Plans Have Neither a Discriminatory Purpose nor a Retrogressive Effect

Section 5 of the Voting Rights Act requires certain covered jurisdictions to submit any voting change to the United States Attorney General or to the United States District Court for the District of Columbia for what is known as "preclearance" of the voting change before it can be implemented. 42 U.S.C. § 1973c. Texas is such a covered jurisdiction and, therefore, has submitted to this Court for preclearance its proposed redistricting plans for the State's delegation to the United States Congress and for the Texas State House of Representatives. Under Section 5, the submitting jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *See Georgia v. United States*, 411 U.S. 526 (1973);

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. § 51.52 (2011).

B. The Section 5 Retrogression Standard Requires a Functional Analysis of Elections

A voting change has a discriminatory effect if it will lead to retrogression in the position of members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change with respect to their ability to exercise the electoral franchise effectively). *See Beer v. United States*, 425 U.S. 130, 140-42 (1976). In the context of redistricting, this means that the State must establish that its proposed plan does not diminish the ability of such minority citizens "to elect their preferred candidate of choice." 42 U.S.C. § 1973c(b).

Voting changes are "measured against the existing practice" – the benchmark – to determine whether the proposed changes will result in retrogression under Section 5. *Riley v. Kennedy*, 553 U.S. 406, 416 (2008). The benchmark against which the new plan is measured is the last legally enforceable redistricting plan in force or effect. *Id.* In this case, where the State is requesting preclearance of statewide plans, analysis of retrogression should be conducted on a statewide basis. *Georgia v. Ashcroft*, 539 U.S. 461, 479 (2003). In its 2006 reauthorization of the Voting Rights Act, Congress clarified that any voting change which has "the effect of diminishing the ability of any citizens of the United States on account of race or color, or [language minority status], to elect their preferred candidate of choice denies or abridges the right to

vote" within the meaning of Section 5. 42 U.S.C. § 1973c(b); *see also id.* § 1973c(d) ("[T]he purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice."). Section 5 jurisdictions may not implement voting changes that diminish the ability of minority voters to exercise their electoral power and to elect their candidates of choice.

Contrary to the arbitrary standard presented by the State in its Motion, determining whether a minority group has the "ability to elect" a candidate of choice under Section 5 is not as simple as looking at a discrete set of population figures. "The legal standard is not total population, voting age population, voting age citizen population or registration, but the ability to elect. The Supreme Court repeatedly has declined to elevate any of these factual measures to a magic parameter." *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 79 (D.D.C. 2002) (three-judge court), *vacated on other grounds*, 539 U.S. 461 (2003) (citing *Johnson v. DeGrandy*, 512 U.S. 997, 1017 n.14 (1994)). The State's analysis of "ability to elect" in both the State House and Congressional plans, consists only of rote application of a population formula. Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment ("Tex. Mem.") at 5 ("To determine whether a district is one in which a minority group has the ability to elect its candidate of choice – *i.e.*, whether the district is a protected opportunity district – courts must look to the racial makeup of the population in the district."). The State, however, confuses "opportunity" district with "ability to elect" district, conflating Section 5 with

Section 2 of the Voting Rights Act, which the Supreme Court has repeatedly advised against. "Section 2 concerns minority groups' *opportunity* to elect representatives of their choice, while the more stringent § 5 asks whether the change has the purpose or effect of denying or abridging the right to vote." *Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009) (citing *LULAC v. Perry*, 548 U.S. 399, 446 (2006); *Reno v. Bossier Parish Sch. Bd.* ("*Bossier I*"), 520 U.S. 471, 476-80 (1997)) (internal quotation marks and citations omitted) (emphasis added). While the Section 2 calculus must include an initial focus on a specific majority-minority population floor to determine if an "opportunity" to elect exists in a proposed "undiluted" alternative to a challenged voting practice, *Bossier I*, 520 U.S. at 480, population is just the starting point of an analysis under Section 5 to determine whether existing electoral power of a minority population has been diminished.

Moreover, the State also has no support for its arbitrary numerical standard. With regard to African-American voters, the State simply concluded that if a district has a Black voting age population greater than 40 percent, then African-American voters can elect their candidate of choice without considering whether those voters actually have elected their candidate of choice at that level. With respect to Hispanic voters, the State posits that if a district has a Hispanic citizen voting age population greater than 50 percent, then Hispanic voters can elect their candidate of choice without considering whether those voters actually have elected their candidate of choice at that level. There is no precedent supporting the State's decision to limit the

ability-to-elect analysis under Section 5 to a limited consideration of demographic data using arbitrary thresholds. Similarly, the State provided no justification for treating the two minority groups differently. The State's analysis constitutes a superficial evaluation of the ability-to-elect status of both the benchmark and proposed plans and ultimately renders its assessment of retrogression invalid.

"In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment." *See* Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act ("2011 Guidance"), 76 Fed. Reg. 7470 (Feb. 9, 2011).[2]

Determining whether the ability to elect exists "requires a functional analysis of the electoral behavior within the particular jurisdiction or election district." *Id.* Besides population, this

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[2] The 2011 Guidance and the Department's Section 5 Regulations, 28 C.F.R. §§ 51.1-.67 (2011), set forth the Attorney General's analytical framework when, under the Act, he acts as the surrogate for this Court in the administrative review of Section 5 submissions. See 28 C.F.R. § 51.52(a). Courts have relied on these documents, particularly the Guidance, as part of their process to assure that court-drawn plans do not violate Section 5's standards. See Colleton County Council v. McConnell, 201 F. Supp. 2d 618, 645-646 (D.S.C. 2002). The Supreme Court has stated that it "traditionally afford[s] substantial deference to the Attorney General's interpretation of Section 5 in light of her "central role . . . in formulating and implementing" that provision. See, e.g., Lopez v. Monterey Cnty., 525 U.S. 266, 281-282 (1999).

includes an examination of election history and voting patterns within the jurisdiction, voter registration and turnout information. *Id. See, e.g.*, *LULAC*, 548 U.S. at 428 (observing that "it may be possible for a citizen voting-age majority to lack real electoral opportunity").

The Texas Legislative Council ("TLC"), a nonpartisan state agency, has advised the Texas Legislature, that "[a]n accurate measurement of minority voting strength requires a thorough district-by-district analysis of current minority population, of racial bloc voting, and of minority voter eligibility, registration, and election participation, since each of these factors affects the ability of minority group voters to elect their preferred candidates." Texas Legislative Council, *State and Federal Law Governing Redistricting in Texas* 91 (2011) (Ex. 2). Moreover, Todd Giberson, a systems analyst in the Texas Attorney General's Legal Technical Support Division, has acknowledged that his office analyzed certain primary and general election contests to assess whether a district was, in fact, an ability-to-elect district for minorities in the state. *See* Giberson Dep. at 16:5-20, 19, Oct. 18, 2011 (Ex. 3). The State has failed to include that analysis in its motion.

As demonstrated by the report of the United States' expert in this case, Dr. Lisa Handley, the proper analysis of the State House or Congressional redistricting plans leads to a conclusion that both are retrogressive – or at least raises disputed issues of fact to preclude entry of summary judgment.

C. The State's Motion for Summary Judgment

Should Be Denied Because There Are Genuine Disputes of Fact as to Whether Both the House Plan and Congressional Plan Are Impermissibly Retrogressive

1. The Proposed House Plan Is Retrogressive Because It Provides Minority Voters with an Ability to Elect Candidates of their Choice in Fewer Districts than the Benchmark House Plan

The Court should deny the State's motion for summary judgment because there is a genuine dispute of material fact as to whether the proposed House plan provides minority voters with the same ability to elect candidates of their choice as the benchmark House plan. As demonstrated by the United States' expert, the benchmark plan includes 50 ability-to-elect districts, while the proposed plan contains no more than 46. This evidence conflicts with the State's assertion, based on its population-only analysis, that the benchmark plan contains 43 ability-to-elect districts and the proposed plan contains 44. Determining whether Texas has met its burden under Section 5 to show that the House plan is not retrogressive will require resolution of these disputed facts, and the motion for summary judgment should therefore be denied

In its Statement of Material Facts, the State relies on its population-only retrogression analysis, claiming the benchmark House plan contains 30 Hispanic opportunity districts and 11 African-American opportunity districts, while its proposed House plan contains 30 Hispanic opportunity districts and 12 African-American opportunity

districts. *See* Statement of Material Facts in Support of Plaintiff's Motion for Summary Judgment at 6-7. Thus, the State claims, the proposed State House plan is not retrogressive. *See* Tex. Mem. at 10-13.

The State's claim with regard to the number of opportunity districts in the State House plan is plainly disputed by the report of the United States' expert. In her report, Dr. Handley finds, utilizing her "functional analysis," that there are 50 districts in the State House benchmark plan in which minority voters have the ability to elect candidates of choice, but there are only 45 or 46 districts in the proposed House redistricting plan that provide minority voters with an ability to elect. *See* Handley House Rep. at 4-13 & app. A (Ex. 4). Dr. Handley specifically found that Districts 33, 35, and 117 provided Hispanic voters an ability to elect in the House benchmark plan but do not provide Hispanic voters an ability to elect in the proposed plan. *See id.* at 9 & app. A. In addition, District 41 provided Hispanic voters with an ability to elect in the benchmark plan, and the State has not met its burden to show that District 41 provides an ability to elect in the proposed plan. *See id.* at 9-10. District 149 is a coalition district in the benchmark plan in which a combined group of minority voters elect their candidate of choice. This district is eliminated altogether in the proposed plan and replaced with a different district in a different county with much smaller minority population. *See id.* at 13 Thus, both the ability-to-elect status of specific districts and the overall number of ability-to-elect districts in both the benchmark and proposed State House plans are disputed.

In her analysis, Dr. Handley examines the

benchmark plan by looking first at the election contests for the State House. *See id.* at 3. Courts refer to the elections involving these districts in dispute as "endogenous" elections and generally consider such elections more probative for determining whether minority voters can elect their preferred candidate of choice. *See, e.g., Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1020-21 (8th Cir. 2006); *Goosby v. Town Bd.*, 180 F.3d 476, 497 (2d Cir. 1999) (*citing Clark v. Calhoun County*, 88 F.3d 1393, 1397 (5th Cir. 1996)); *Johnson v. Hamrick*, 196 F.3d 1216, 1222 (11th Cir. 1999). For the proposed House plan, Dr. Handley, examined the districts' likely performance using recompiled election results[3] from five contests involving Hispanic candidates that were not specific to the districts at issue. *See* Handley House Rep. at 3-4, 8.[4] Courts refer to such

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[3] Recompiled election analysis is simply the practice of aggregating votes from past elections to predict how voters in a proposed district will perform in the future. More specifically, recompilation analysis looks at the votes actually cast in a voting precinct and then recompiles a vote count for those precincts that would comprise the proposed district. Because the proposed district often times includes voting precincts that were not a part of the benchmark district, recompilation analysis can only be performed by looking at elections that span the entire jurisdiction, in this case, statewide elections. Recompilation analysis thus depends strictly on exogenous elections and does not work with endogenous elections that are specific to any particular district. The purpose of recompiled election analysis is to determine whether a minority-preferred candidate would prevail if the districts were drawn as proposed.

[4] When assessing ability to elect, courts have generally found that elections involving minority candidates are more probative than Anglo-only election contests. Bone Shirt, 461 F.3d at

elections as "exogenous." Because the district lines change, Dr. Handley cannot use endogenous elections to determine if the districts as revised in the proposed plan will still elect a minority candidate of choice. She evaluated an election from each of the following years: 2002, 2004, 2006, 2008, and 2010. *See id.* at 8.

1020–21 ("Endogenous and interracial elections are the best indicators of whether the white majority usually defeats the minority candidate."); Ruiz v. City of Santa Maria, 160 F.3d 543, 553–54 (9th Cir. 1998) ("[I]n a multi seat, multi vote election, the ability of the minority to elect a non minority candidate is not as probative in a Gingles prong three analysis as the inability of the minority to elect a minority candidate."); Uno v. City of Holyoke, 72 F.3d 973, 988 n.8 (1st Cir. 1995) ("Although the VRA does not require for a successful Section 2 showing that minority-preferred candidates be members of the minority group, elections in which minority candidates run are often especially probative on the issue of racial bloc voting."); Nipper v. Smith, 39 F.3d 1494, 1540 (11th Cir. 1994) (en banc) (holding that elections involving only white candidates are generally less probative than those involving minority candidates); LULAC v. Clements, 999 F.2d 831, 849 (5th Cir. 1993) (en banc) ("This court has consistently held that elections between white candidates are generally less probative in examining the success of minority-preferred candidates, generally on grounds that such elections do not provide minority voters with the choice of a minority candidate."); Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Ed., 4 F.3d 1103, 1128 (3d Cir. 1993) ("As a general matter, we believe that elections involving white candidates only are much less probative of racially polarized voting than elections involving both black and white candidates."); Black Political Task Force v. Galvin, 300 F. Supp. 2d 291, 304 (D. Mass. 2004) ("After having conducted an exhaustive review of the case law and the circumstances of this litigation, we conclude that the most probative elections for our purposes are likely to be multi-race endogenous elections.").

a. District 33

Benchmark District 33 is located in Nueces County in the heart of Corpus Christi. Both the State and the United States agree that under the benchmark plan District 33 is an ability-to- elect district for Hispanic voters in Nueces County. Dr. Handley's election-focused analysis found that benchmark District 33 was an ability-to-elect district for Hispanic voters. *See id.* at 5. In the proposed plan, the State eliminates benchmark District 33 in Nueces County and moves the district to Rockwall County, near Dallas.[5] There is no dispute that proposed District 33 does not provide minority voters with the ability to elect their candidate of choice, *see* Tex. Mem. at 11, Handley House Rep. at 9, and Texas has not created a compensatory district for that loss, either in Nueces County or elsewhere in the State, *see* Handley House Rep. at 13-14.

b. District 35

In the proposed plan, south Texas lost another district in which Hispanics had the ability to elect a candidate. Both the State and the United States agree that, under the benchmark plan, District 35 is an ability-to-elect district for Hispanic voters. *See* Handley House Rep. at 5; Tex. Mem. at 11. The State argues that District 35 is maintained as an

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[5] The State relies on the County Line Rule, Tex. Const. art. III, § 26, a state constitutional provision dictating specific treatment of county boundaries when drawing a State House plan, as its basis for not preventing prohibited retrogression in Nueces County. Downton Dep. at 133:16-25, 134:1-2, Oct. 20, 2011. However, the County Line Rule must give way to federal law, including the Voting Rights Act.

ability-to-elect district in the proposed plan, but the United States disagrees. *Compare* Tex. Mem. at 11, *with* Handley House Rep. at 9. Hispanic citizen voting-age population ("CVAP") decreased from 54.6 percent in the benchmark plan to 52.5 percent in the proposed plan, and Spanish surname voter registration ("SSVR") decreased from 55.4 percent to 52.7 percent. Dr. Handley's analysis shows that Hispanic voters in District 35 are able to elect their candidate of choice in the benchmark in 80 percent of state house races and in 40 percent of the statewide contests analyzed. Handley House Rep. at 5. In the proposed plan, Hispanic voters can elect their candidate of choice in only 20 percent of the contests. *Id.* at 11. According to Dr. Alford, the State's expert, election analysis of the performance of statewide candidates preferred by Hispanic voters in District 35 decreases from 58 percent in the benchmark to 48 percent in the proposed. *See* Alford Rep. at 7-8 (Ex. 6).[6] As discussed in the report of Dr. Theodore Arrington, the United States' expert concerning discriminatory intent, during the redistricting process mobilized Hispanic voters were removed from this district in order to improve Republican performance in the district and to limit the ability of Hispanics to elect candidates. *See* Arrington Rep. ¶ 17 (Ex. 7). These changes to enhance Republican performance eliminates the

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[6] Regarding the Congressional plan, Dr. Alford assumed during the Perez v. Perry trial that the failure of the Democratic candidate in the reaggregated elections meant that Hispanics failed to elect their candidate of choice. Trial Tr., Perez v. Perry, No. 5:11-cv-360 (W.D. Tex. 2011), at 1864:17-20 (Ex. 8). He did not analyze the State House contests at that trial.

ability of Hispanic voters in District 35 to elect a candidate of choice.

c. District 41

District 41 is located in Hidalgo County in south Texas. Both the State and the United States agree that, under the benchmark plan, District 41 is an ability-to-elect district for Hispanic voters. *See* Handley House Rep. at 5; Tex. Mem. at 11. The State maintains that District 41 is an ability-to-elect district in the proposed plan, but the United States asserts that the State has not met its burden in this regard. *Compare* Tex. Mem. at 11, *with* Handley House Rep. at 9-10. Hispanic CVAP decreased from 77.5 percent in the benchmark plan to 72.1 percent in the proposed plan. Spanish surname voter registration decreased from 68.7 percent to 63 percent. As discussed in Dr. Arrington's report, proposed District 41 was crafted for an incumbent who had previously been elected in benchmark District 40, Representative Peña, and a significant number of Anglo voters were drawn into the district in the proposed plan. *See* Arrington Rep. ¶ 100 tbl. 11; V. Gonzales Decl. ¶¶ 5, 10-13 (Ex. 9); Longoria Decl. ¶¶ 11-17 (Ex. 10). Dr. Handley is unable to determine whether the proposed district provides for the ability to elect both because reliable election data is not available for the significant portion of the population that resides in precincts split between two districts and because the recompiled election analysis showed very close results. *See* Handley House Rep. at 9-10. According to Dr. Alford, the State's expert, the election analysis of the performance of statewide candidates preferred by Hispanic voters in District 41 decreases from 67

percent in the benchmark to 48 percent in the proposed. *See* Alford Rep. at 7-8.

d. District 117

District 117 is located in Bexar County near San Antonio. Both the State and the United States agree that in benchmark District 117, Hispanics have the ability to elect a candidate of choice. Under the proposed plan, the State removes portions of District 117 near San Antonio in exchange for other parts of the County. Hispanic CVAP in the district increased from 58.8 percent in the benchmark plan to 63.8 percent in the proposed plan. However, Spanish surname voter registration decreased from 50.3 percent to 50.1 percent. As discussed in Dr. Arrington's report, this exchange involved trading out mobilized Hispanic voters for other Hispanic voters. Arrington Rep. ¶ 17. Without these mobilized voters, Hispanic turnout in the proposed District 117 would be reduced compared to turnout in the benchmark District 117. Martinez Fischer Decl. ¶¶ 13, 15-16 (Ex. 11). The State's population-based approach to analyzing the ability to elect fails to account for this factor, allowing the State to maintain that, after redistricting, Hispanics still have the ability to elect a candidate of choice in District 117. Dr. Handley's election-focused analysis, however, accounts for this reduction in Hispanic turnout, concluding that, under the proposed plan, Hispanic-preferred candidates will not have the ability to elect. Handley House Rep. at 11 tbl. 4. According to Dr. Alford, election analysis of the performance of statewide candidates preferred by Hispanic voters reveals a decrease from 60 percent in District 117 in the benchmark plan to 33 percent

in the proposed plan. *See* Alford Rep. at 7-8.

e. District 149 and Coalition Districts under Section 5

District 149 in the benchmark is based in southwest Harris County (including Houston), and Dr. Handley finds that the incumbent in District 149, Hubert Vo, is elected by a coalition of Hispanic, Black, and Asian voters. *See* Handley House Rep. at 3, 7; *see also* Hochberg Decl. ¶¶ 4-5 (Ex. 12). District 149 in the benchmark plan has a combined minority citizen voting age population of 61.7 percent. Handley House Rep. at 7. Since 2004, this coalition of voters in the Alief area of Houston has organized and voted cohesively to elect Rep. Vo. Winkler Decl. ¶¶ 10-11 (Ex. 13). The State eliminates the district from Harris County altogether, and District 149 in the proposed plan is moved across the state to Williamson County, where there are few minority voters. The loss of District 149 means that this coalition of minority voters in Alief will no longer have the ability to elect a candidate of choice. In the view of the United States, District 149 is protected under the Voting Rights Act. *See* Handley House Rep. at 13.[7]

The text of Section 5, as amended by Congress just five years ago, is broad enough to protect

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[7] The United States' expert has identified additional districts in which citizens of one minority group may have the ability to elect candidates of their choice only when coalesced with other minority citizens. However, all of these other districts provide minority voters the same ability to elect in both the benchmark and proposed plans, so it does not matter how the districts are labeled.

districts such as District 149. By its terms, Section 5 protects any citizens against the adoption of voting changes that have the purpose or effect of denying or abridging their right to vote "on account of race or color." 42 U.S.C. § 1973c(a). This broad protection is not limited to those voting changes adversely affecting individuals of a single race only. For example, the adoption of a "Whites-only" primary would simultaneously deny the voting rights of both Blacks and Hispanics (and, indeed, individuals of any other race), and could be challenged by either, or both in concert.

Subsection (b) of Section 5 precludes covered jurisdictions from making changes that would "diminish[] the ability of any citizens of the United States on account of race or color, or [membership in a language minority], to elect their preferred candidates of choice." 42 U.S.C. § 1973c(b). When enacting this language, Congress apparently understood it to protect districts such as benchmark District 149. The House Report on the 2006 amendments, which the Supreme Court has regarded as authoritative, *see Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009) (citing the report repeatedly), explains that, under the new language, "[v]oting changes that leave a minority group less able to elect a preferred candidate of choice, *either directly or when coalesced with other voters*, cannot be precleared under Section 5." H.R. Rep. No. 109-478, at 71 (2006) (emphasis added). Thus, Congress expected the amended Section 5 to protect coalition districts, *i.e.*, those in which minority citizens of more than one racial group are able to elect a preferred candidate of

choice when they coalesce.

This explicit approval of protections for coalesced minority groups is consistent with the views expressed by Congress in earlier reauthorizations. In its 1975 reauthorization of the Voting Rights Act , Congress expanded protections for certain racial minorities who also are language minorities, including requiring Section 5 preclearance for jurisdictions (such as Texas) with a history of discriminating against them. Congress extensively studied Texas's history of discriminating against both African Americans and Hispanics and concluded that the State had "a long history of discriminating against members of both minority groups in ways similar to the myriad forms of discrimination practiced against blacks in the South." S. Rep. No. 94-295, at 25 (1975). In particular, Texas used at-large representation to "effectively deny Mexican Americans and black voters in Texas political access in terms of recruitment, nomination, election and ultimately, representation." *Id.* at 27-28.

As a result of that expansion of Section 5's coverage in 1975, by the time Congress amended the Voting Rights Act in 1982, the Attorney General's exercise of this Section 5 authority provided ample evidence of discriminatory practices in certain jurisdictions – including Texas – that affected Hispanics and African Americans alike. For example, in 1975, the Attorney General refused to pre-clear under Section 5 a Texas bill that would have required all registered voters to re-register or be purged from the voting rolls. He found that this change would have a discriminatory effect "[w]ith

regard to cognizable minority groups in Texas, namely, blacks and Mexican-Americans." H. R. Rep. No. 97-227, at 15-16 (1981). In 1981, the Attorney General refused to pre-clear the closing of polling places near both African-American and Hispanic communities. S. Rep. No. 97-417, at 11 (1982). During consideration of the 1982 amendments, the Attorney General objected to a New York City redistricting plan on the basis of its effects on African-American and Hispanic voters. *See id.*

The only reported Section 5 decision of which we are aware involving coalition districts under Section 5, which predated the 2006 amendments, did not doubt that true coalition districts could be protected, though it found no such coalition was at issue in that case. In *Texas v. United States*, 802 F. Supp. 481 (D.D.C. 1992) (three-judge court), the State of Texas sought judicial preclearance for the redistricting plan it adopted following the 1990 Census. The court concluded that the plan did not have a retrogressive effect, because the number of districts in which "minorities can elect candidates of their own choosing" increased by one, with the creation of an additional "Hispanic district." *Id.* at 486. It credited the conclusion of the State's expert, who found, based on "major differences . . . in the pattern of Black and Hispanic support," that "mixed minority" districts "would not actually work and could not be considered minority districts." *Id.* By implication, a cohesive "mixed minority" or coalition district would have counted in terms of determining the number of districts in which minority voters had the ability to elect their preferred candidates.

Although there is little case law regarding

coalition districts under Section 5, a number of courts have addressed the issue of coalition districts under Section 2 of the Voting Rights Act of 1964, 42 U.S.C. § 1973. The Supreme Court has "[a]ssum[ed] (without deciding) that it was permissible for the district court to combine distinct ethnic and language minority groups for purposes of assessing compliance with Section 2 . . . ." *Growe v. Emison*, 507 U.S. 25, 41 (1993).

With one exception, lower courts addressing the issue have either held expressly or assumed that the analysis of Section 2 claims set out by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), applies to Section 2 claims on behalf of a coalition of minority voters. For example, the Fifth Circuit expressly addressed this issue in *Campos v. City of Baytown* and held that "nothing in the law . . . prevents the plaintiffs from identifying the protected aggrieved minority to include both Blacks and Hispanics." 840 F.2d 1240, 1244 (5th Cir. 1988). The appellate court affirmed the trial court's findings that the coalition minority group was sufficiently compact to be a majority in a single-member district, that Blacks and Hispanics were politically cohesive, and that bloc voting by the White majority usually prevented them from electing their preferred candidates. The court specifically rejected the City's argument that "plaintiffs must show that Blacks are cohesive, that Hispanics are cohesive and that Blacks and Hispanics are together cohesive," finding that "that burden is too great, if not impossible, in certain situations." *Id.* at 1245. Instead, noting "the proper standard is the same as in *Gingles*," the court opined: "The key is the

minority group as a whole." *Id.*

Similarly, in *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524 (11th Cir. 1990), the Eleventh Circuit followed the Fifth Circuit and held that "[t]wo minority groups . . . may be a single section 2 minority if they can establish that they behave in a politically cohesive manner." The court affirmed the district court's dismissal of plaintiff's Section 2 claim, but only because the "class failed to demonstrate that blacks and Hispanics in Hardee County have ever voted together." *Id.* at 527. Likewise, the Second Circuit upheld the district court's application of the *Gingles* framework to a vote dilution claim brought by a coalition of Black and Hispanic voters in *Bridgeport Coal. v. City of Bridgeport*, 26 F.3d 271, 275-76 (2d Cir.), *vacated and remanded on other grounds*, 512 U.S. 1283 (1994). The court quoted favorably the district court's findings that "[c]ombining minority groups to form [majority-minority] districts is a valid means of complying with Section 2 if the combination is shown to be politically cohesive," and that "White bloc voting in Bridgeport will dilute minority voting except in districts in which clear [minority-majorities] are established, by a single group or a combination African-American and Latino voters." *See id.* at 275. In sum, the Second Circuit found "more than sufficient evidence to support a conclusion that the Coalition satisfied its burden imposed by *Gingles*." *Id. But see Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc) (holding that the plain language of Section 2 does not support a vote dilution claim by a coalition of minority groups).

In our view, the text and legislative history of Section 5 of the Voting Rights Act, including the 2006 amendments, stand as the clearest expression of Congressional intent on this issue. Congress plainly contemplated the protection of districts where minority voters are electorally cohesive under Section 5. Even without benefit of such a clear statement of congressional intent, most circuits have reached a similar view with respect to Section 2. As such, the proposed plan's disassembly of District 149, in which minority voters had the ability to elect in the benchmark, is retrogressive.

2. The Proposed Congressional Plan Is Retrogressive

The proposed Congressional redistricting plan has a retrogressive effect. The proposed plan decreases the percentage of districts in which minority voters have the ability to elect, and many Hispanic voters who currently reside in districts in which they can elect a candidate of choice in the benchmark would no longer have that ability to elect in the proposed plan.

The State's flawed analysis that considered only demographics of districts in assessing ability to elect leads to the conclusion that the benchmark plan contains seven Hispanic opportunity districts (Districts 15, 16, 20, 23, 27, 28 and 29) and one African-American opportunity district (District 30), and that the proposed plan contains seven Hispanic opportunity districts (Districts 15, 16, 20, 23, 28, 29, and 34) and two African-American opportunity districts (Districts 18 and 30). Material Facts in Support of Plaintiff's Motion for Summary Judgment

at 4-5. The State concludes in its Motion that statewide, the proposed plan increases the number of minority opportunity districts. *See* Tex. Mem. at 6-7, 9. [8]

The State's conclusion as to "opportunity districts" in the benchmark and proposed Congressional plan is plainly disputed by the report of the United States' expert, Dr. Handley, who concludes that the proposed Congressional plan does not increase the number of minority opportunity districts when compared to the benchmark, but rather maintains the same number of such districts in the context of an expanded delegation. *See* Handley Cong. Rep. at 8-9 (Ex. 14). Dr. Handley's report demonstrates that there are seven Hispanic ability-to-elect districts (Districts 15, 16, 20, 23, 27, 28 and 29) and three African American ability-to-elect districts (Districts 9, 18 and 30) in the benchmark plan and seven Hispanic ability-to-elect districts (Districts 15, 16, 20, 28, 29, 34 and 35) and three African American ability-to-elect districts (Districts 9, 18 and 30) in the proposed plan. Handley Cong. Rep. at 5-9. In essence, Dr. Handley

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[8] Dr. Handley's reports clears up the confusion created by the State's filings in this case. In its Complaint, the State does not characterize any of its districts as "opportunity" or "ability-to-elect" districts, but rather describes them according to population characteristics. See Compl. ¶¶ 36-37 & attachment 1, at 3-5. In its Motion, the State characterizes certain districts as "opportunity" districts but does not always adhere to its own population criteria. Thus, the State now characterizes proposed District 35 as an opportunity district where it does not meet the Complaint's population criteria of 60 percent Hispanic voting-age population ("HVAP"). See Tex. Mem. at 8; see also Handley Cong. Rep. at 8.

concludes that the State did not simply maintain the same ten ability-to-elect districts, but rather that it removed two districts (23 and 27) in which Hispanics had the ability to elect under the benchmark plan and created two new districts (34 and 35) in which Hispanics have the ability to elect in the proposed plan, leaving Hispanic voters with a smaller shaer of the now larger congressional delegation. There are thus disputed issues of fact as to whether the State's proposed Congressional plan increases the number of ability-to-elect districts when compared to the benchmark.

a. District 23

Under the existing plan, Congressional District 23 is located in southwest Texas and encompasses 17 whole counties and parts of three other counties. Both the State and the United States agree that, under the benchmark plan, District 23 is an ability-to-elect district for Hispanic voters. *See* Tex. Mem. at 8-9; Handley Cong. Rep. at 5-6. The State maintains that District 23 is an ability-to-elect district in the proposed plan, but the United States disagrees. *Compare* Tex. Mem. at 8-9, *with* Handley Cong. Rep. at 7-8. Hispanic CVAP in the district increased from 58.4% in the benchmark plan to 58.5% in the proposed plan. Spanish surname voter registration increased from 52% in the benchmark plan to 54% in the proposed plan. However, the exogenous election performance decreases from 40% in the benchmark plan to zero in the proposed plan. Handley Cong. Rep. at 11. In his trial testimony in *Perez v. Perry*, Dr. Alford stated that District 23 did not allow Hispanic voters to elect their candidate of choice. Trial Tr., *Perez v. Perry*, No. 5:11-cv-360

(W.D. Tex. 2011), at 1878:5-6 [hereinafter "*Perez* Tr."] (Ex. 8) ("[Dr. Alford]. I – I don't count 23 as one of the seven performing districts when I evaluate [the proposed Congressional plan].") In particular, Dr. Alford said that he would "not recommend changing the 23rd in the way in which it was changed." *Id.* at 1879:21-22.

b. District 27

Under the existing plan, Congressional District 27 is located in south Texas, bordering on both Mexico and the Gulf of Mexico. It includes all of Kenedy, Kleberg, Nueces, and Willacy counties, and parts of Cameron and San Patricio counties. Both the State and the United States agree that, under the benchmark plan, District 27 is an ability-to-elect district for Hispanic voters. *See* Tex. Mem. at 8; Handley Cong. Rep. at 5-6. Under the proposed plan, District 27 will be substantially reconfigured and moved north removing Kenedy, Kleberg, Willacy, and Cameron counties population. The proposed district adds the whole counties of Aransas, Calhoun, Jackson, Lavaca, Matagorda, Refugio, Victoria, and Wharton counties, and parts of Bastrop, Caldwell, and Gonzales counties. All of Nueces County and a slightly larger portion of San Patricio County remain in proposed District 27. Both the State and the United States agree that Hispanic citizens will not be able to elect candidates of their choice in proposed District 27. *See* Tex. Mem. at 8; Handley Cong. Rep. at 5-6.

c. Retrogression Standard in the Congressional Plan

A simple numerical comparison of the ability-

to-elect districts in the benchmark and proposed Congressional plans does not provide a complete view of the existence of retrogression as it does in the State House plan, insofar as the total number of districts in the State House remain the same following redistricting, while the total number of the districts in Texas' congressional delegation increases from 32 in the benchmark to 36 in the proposed. Rather, the existence of retrogression in the proposed Congressional plan should be determined through a more detailed look at the actual effect that the proposed voting change has on minority electoral power in Texas. This is because, after all, the State has asked this Court for "a determination that the [plan] is no more dilutive than what it replaces," *Reno v. Bossier Parish Sch. Bd.* ("*Bossier II*"), 528 U.S. 320, 335 (2000), which is comparing proposed minority electoral strength to the benchmark.

The State's request for a judgment of Section 5 preclearance of the proposed Congressional plan is made in the context of an almost unprecedented increase in the number of seats in its Congressional delegation – four – resulting from a State population increase fueled mostly by the increase in the State's Hispanic population.[9]

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[9] An increase of four in the number of Congressional seats, as just occurred in Texas, is unprecedented in states fully covered under Section 5. Both California and Florida experienced similar increases since 1970, but Section 5 coverage for both states is not statewide, only in a small number of counties. California went from 45 to 52 (+7) between 1980 and 1990, and Florida from 15 to 19 (+4) between 1970 and 1980, and from 19 to 23 (+4) between 1980 and 1990. Texas has seen smaller increases in the past, specifically, between 1970 and 1980 from

According to the 2010 Census, from 2000 to 2010, the total population of Texas increased by 4,293,741 persons to 25,145,561, and the total Hispanic population of the state increased by 2,791,255 persons to 9,460,921. Thus, the growth in the State's Hispanic population accounted for 65 percent of the State's total population increase during that decade, and Hispanics now constitute 37.6 percent of Texas's total population. Handley Cong. Rep. at 1 n.1. Under such circumstances, as is demonstrated below, the electoral power of the State's Hispanic population has been clearly diminished, amounting to prohibited retrogression.

Under the benchmark Congressional plan, minority voters currently have the ability to elect their preferred candidates of choice in ten of the thirty-two Congressional districts in Texas. They thus possess electoral power in 31.3 percent of the State's Congressional districts. The proposed Congressional plan reduces that power to ten out of thirty-six districts – 27.7 percent of the State's Congressional Districts. Applying this same focus only to the State's Hispanic voters, under the benchmark Congressional plan, Hispanic voters currently have the ability to elect their preferred candidates of choice in seven of the 32 Congressional districts in Texas. They thus possess electoral power in 21.9 percent of the State's Congressional districts, already far below their proportion of the state

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24 to 27 (+3) and between 1980 and 1990 from 27 to 30 (+3). See U.S. Dep't of the Interior, National Atlas: Congressional Apportionment (Feb. 28, 2011), at http://nationalatlas.gov/articles/boundaries/a_conApport.html.

population. The proposed Congressional plan reduces that power further by establishing only seven ability-to-elect districts out of 36 total – 19.4 percent of the State's Congressional Districts. Handley Cong. Rep. at 10-11 tbl. 7. While Section 5 may not require that minority groups be accorded electoral power proportional to their representation in the population, it prohibits actual diminution of minority existing electoral power. The circumstances in this case are exceptional, yet the State proposes not to maintain the share of minority ability-to-elect districts in the Congressional delegation, and has chosen to take away from a substantial number of Hispanics their ability to elect candidates of choice. As a result, Hispanics in Texas will have a diminished ability to elect members of Texas' Congressional delegation.

The exceptional circumstances in this case readily distinguish it from *Abrams v. Johnson*, 521 U.S. 74 (1997). In *Abrams*, several Georgia voters challenged the congressional redistricting plan adopted by the district court as being inconsistent with Sections 2 and 5 of the Voting Right Act, claiming, among other things, that it included only one majority-Black district and did not adequately represent the interests of Georgia's Black population. In the benchmark plan, one out of 10 districts was majority Black, while the district court's plan kept one majority Black district even though the total number of districts had increased to 11. The court rejected the claim that Blacks did not have "the same electoral opportunities" under the district court's plan since it reduced their relative influence from one of 10 districts (10 percent) to one

of 11 districts (9 percent). *Id.* at 97-98. The court specified that the VRA does not mandate that "each time a State with a majority-minority district" is allowed to "add one new district because of population growth, it would have to be majority-minority. This the Voting Rights Act does not require." *Id. Abrams* does not address circumstances, present here, where the increase in the number of districts is much greater than one – in this case, four – and where the population growth is predominately led by Hispanic voters. Under the proposed plan, Hispanic voters will lose ground in their existing ability to elect candidates of choice with the proposed plan even though the number of majority Hispanic districts remains the same, seven.

In addition to the above, the State's own actions with regard to District 23, which may give rise to a finding of discriminatory purpose (see below), cannot be ignored in determining the existence of the retrogressive effect of the State's action in the proposed Congressional plan. The State considers benchmark District 23 to be a Hispanic opportunity district under Section 5. Despite that view, however, the State took action resulting in the weakening of the election performance of the proposed District 23, and removal of its ability-to-elect status, to ensure that a Hispanic candidate of choice could not be elected. Ruiz Mendelsohn Decl. ¶¶ 5-9 (Ex. 15); Rodriguez Decl. ¶¶ 4-6 (Ex. 16). The State employee who participated in drawing the State's Congressional plan has testified that proposed District 23 was constructed in such a way as to increase slightly the Hispanic population metrics, while at the same time increasing the

partisan Republican performance of the District for the incumbent, who is indisputably not the Hispanic-preferred candidate of choice. Downton Dep. at 43:22-25, 44:1-25, 45:1-16, Oct. 20, 2011 (Ex. 5).

The effect of this line drawing is to decrease Hispanic turnout dramatically in proposed District 23. The racially polarized voting analysis provided by the State shows that it increased the number of Hispanics voting for the Republican candidates only slightly. The chart below shows that the real effect was to significantly decrease the number of Hispanics voting for the Hispanic preferred candidate.

	Benchmark Estimated Hispanic Votes for Anglo Candidate	Proposed Estimated Hispanic Votes for Anglo Candidate	Benchmark Estimated Hispanic Votes for Hispanic Candidate	Proposed Estimated Hispanic Votes for Hispanic Candidate
2002	7,614	8,572	59,861	48,455
2004	13,421	13,923	74,156	57,621
2006	8,614	9,254	42,891	31,970
2008	6,805	9,445	83,907	67,650

2010	755	3,812	45,291	33,503

See State of Texas's Racially Polarized Voting Analysis for Congressional District 23 (Ex. 17); *see also* United States' Identifications of Elections Considered (Docket # 58). The above-cited actions of the State – seeking to change an admitted "opportunity" district so as to increase the electability of a Hispanic-non-preferred candidate of choice – not only speak to the State's retrogressive intent, but to the retrogressive effect of the State's seemingly successful intended actions. In this case, Texas was not the "incompetent retrogressor." See *Bossier II*, 528 U.S. at 332.

Finally, under the benchmark plan, there are ten districts in which minorities have the ability to elect candidates of their choice, and according to the 2010 Census, there is a total Hispanic population of 4,974,087 persons in these benchmark districts. Handley Cong. Rep. at 2 tbl. 1. Under the proposed plan, there are ten districts in which minorities have the ability to elect candidates of their choice, and according to the 2010 Census, there is a total Hispanic population of 4,494,383 persons in these proposed districts. Handley Cong. Rep. at 9 tbl. 6. Thus, the State's proposed Congressional plan, while maintaining the same number of minority ability-to-elect districts as in the benchmark plan, reduces by 479,704 the number of Hispanics in the State's ten minority ability-to-elect Congressional districts. *Id.* The State has chosen to do this despite the substantial growth in the State's Hispanic population over the past decade, responsible for most

of the total population growth in the State between 2000 and 2010 and the resulting four seat increase in the State's Congressional delegation. While Section 5 does not compel the State to increase Hispanic voting power, under the circumstances of this case, Section 5 does not give the State license to decrease already existing Hispanic voting power as it has.

d. Unavoidable Retrogression

Nor was the State unable to avoid the retrogression from the benchmark to the proposed plan in District 23.[10] In fact, the State could have maintained benchmark District 23 as an ability-to-elect district with only minor changes to its proposed plan which do not impact the rest of the proposed districts. *See* Handley Cong. Rep. at 9-10. In doing so, the State would have at the least maintained the overall share of Hispanic voting strength contained in the benchmark plan.

D. There Is Direct and Circumstantial

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[10] Whether the State could have avoided retrogression in the formulation of its redistricting plan is a factor in the overall retrogression analysis. See 2011 Guidance, 76 Fed. Reg. at 7472 ("In considering whether less- retrogressive alternative plans are available, the Department of Justice looks to plans that were actually considered or drawn by the submitting jurisdiction, as well as alternative pans presented or made known to the submitting jurisdiction by interested citizens or others. In addition, the Department may develop illustrative alternative plans for use in its analysis, taking into consideration the jurisdiction's redistricting principles. If it is determined that a reasonable alternative plan exists that is non-retrogressive or less retrogressive than the submitted plan, the Attorney General will interpose an objection.")

Evidence of Discriminatory Purpose in the Enactment of Both the Proposed House and Proposed Congressional Plans.

The United States and State disagree on the critical material fact of whether the House and Congressional redistricting plans were adopted, at least in part, with a prohibited discriminatory purpose in violation of Section 5. As outlined below, and discussed in greater detail in Dr. Arrington's declaration, there is direct and circumstantial evidence that the development and passage of these redistricting plans were tarnished by the prohibited purpose of diminishing the ability of citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates. As discussed in Part I, *supra*, the Supreme Court has held that question of intent or motive are rarely appropriate for summary judgment. *See, e.g.*, *Hunt*, 526 U.S. at 552-53.

1. The Section 5 Purpose Standard Includes Direct and Circumstantial Evidence of Discriminatory Intent.

To meet its preclearance burden under Section 5, in addition to demonstrating the absence of discriminatory effect, the State has the burden of demonstrating that the voting changes at issue do not have the purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group. 42 U.S.C. § 1973c(a). Congress has defined "purpose" under Section 5 as including "any discriminatory purpose." *Id.* § 1973c(c).

In its Memorandum, the State argues that

"any discriminatory purpose" refers "only to intentional discrimination that itself violates the Fourteenth or Fifteenth Amendment." Tex. Mem. at 17. In arguing the absence of such purpose in the State's passage of both the Congressional and State House plans, the State points only to allegedly undisputed evidence, contained mostly in conclusory declarations of State legislative officials and legislative journals, that the State was motivated by "ordinary districting principles and, therefore, not by any invidious unconstitutional purpose." *Id.* at 24; *see also id.* at 25, 27-28 (same). The State also submits form declarations stating that that during the redistricting process for both the Congressional and State House plans, no changes were proposed by any Texas legislator, legislative staff member or anyone else, with "the purpose of harming any voter or group of voters on account of their race, ethnicity or national origin" and that the State legislative leadership would not have permitted any such proposal to be brought to the legislative floor for debate or consideration. Tex. Mem. at 26, 29.[11]

The State's argument with regard to discriminatory purpose appears to be that as long as

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[11] These form declarations were prepared by the Texas Attorney General's Office without prior consultation with the declarants concerning their content. See Solomons Dep. at 194:14-195:24, Oct. 14, 2011 (Ex. 18). Moreover, multiple declarants admitted that they lacked personal knowledge of whether other legislators, legislative staff, or consultants relied on race in drawing districts incorporated in the final plan. See, e.g., Downton Dep. at 51:14-52:3, Oct. 20, 2011; Interiano Dep. at 175:15-176:18, Oct. 20, 2011; Solomons Dep. at 199:15-20, Oct. 14, 2011.

there is no "smoking gun" evidence of specific racial intent, there can be no violation of the purpose prong of Section 5. However, what is noticeably absent from the State's discussion of discriminatory purpose under Section 5 is any discussion of what the Supreme Court itself has set down as guidance for assessing discriminatory purpose in the context of redistricting. As the Court stated in *Bossier I*, "assessing a jurisdiction's motivation in enacting voting changes is a complex task requiring a 'sensitive inquiry into such circumstantial and direct evidence as may be available.'" 520 U.S. at 488 (citing *Arlington Heights*, 429 U.S. at 266). "There, we set forth a framework for analyzing 'whether invidious discriminatory purpose was a motivating factor' in a government body's decisionmaking." *Id.* (citing *Arlington Heights*, 429 U.S. at 266).

Under the *Arlington Heights* rubric, the "important starting point" for assessing whether the State can establish that the proposed plan was adopted free of a discriminatory purpose is "the impact of the official action whether it bears more heavily on one race than another. *Id.* (citing *Arlington Heights*, 429 U.S. at 266). "In a § 5 case, 'impact' might include a plan's retrogressive effect and...its dilutive impact." *Id.* Other factors besides impact relevant to a purpose inquiry under *Arlington Heights* include: the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; the sequence of events leading up to the decision; whether the challenged decision departs, either procedurally or substantively, from the normal practice; and contemporaneous statements and

viewpoints held by the decision-makers. *Id.* at 266-68; *see also* 2011 Guidance, 76 Fed. Reg. at 7471; Arrington Rep. ¶ 9.[12]

The State also contends that such intentional discrimination must be "actually motivated by racial or ethnic animus," Tex. Mem. at 19, with no support in the statutory text or jurisprudence. In *Bossier Parish II*, the Supreme Court held that the "purpose prong" of Section 5 barred voting changes that are intended to retrogress the voting strength of present or future minority voters. *See* 528 U.S. at 337-341. The 2006 Amendments to the Voting Rights Act expanded the purpose prong to address the broader field of discriminatory aims, *see* 42 U.S.C. § 1973c(c), but did not eliminate the prohibition on voting changes enacted with an intent to retrogress. In addition, intentional discrimination encompasses actions that purposefully discriminate to achieve an otherwise permissible aim. *See Garza v. County of Los Angeles*, 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski J., concurring in part and dissenting in part) (describing purposeful housing discrimination motivated by a desire to maintain property values). Such changes fall within the bar on changes with "any purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group." 28 C.F.R. § 51.54(a); *see also* 2011 Guidance, 76 Fed. Reg. at 7471 ("The

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[12] The TLC specifically notes in its guidance to state legislators that Congress and the Department of Justice set out the Arlington Heights framework as the means by which to assess intent. See State and Federal Law Governing Redistricting in Texas, supra, at 87-89 (citing H.R. Rep. No. 109-478, at 66-68 (2006); 28 C.F.R. §§ 51.54-.59); see also Arrington Rep. ¶ 9.

Department will also evaluate whether there are instances where the invidious element may be missing, but the underlying motivation is nonetheless intentionally discriminatory.").

Utilizing the *Arlington Heights* analysis in this case, as is amply demonstrated both by the reports of the United States' experts, Dr. Handley and Dr. Arrington, as well as by the declarations and other exhibits appended to this Response, and applying the broad scope of the purpose prong set out in the 2006 Amendments to the Voting Rights Act, there is substantial factual dispute concerning whether the proposed Congressional and State House plans were enacted with a discriminatory purpose.

2. There Are Genuine Disputes of Material Facts Regarding Whether the Proposed House Plan Was Adopted with Discriminatory Intent.

The Court should deny the State's request for summary judgment regarding the purpose of the proposed State House plan because substantial evidence creates a genuine dispute of material facts concerning the possible presence of a discriminatory purpose. Dr. Handley and Dr. Arrington's reports establish a discriminatory impact in four or five districts. These retrogressions occurred using techniques that suggest a discriminatory purpose, including setting boundaries at a level of detail where race is the only available data and substituting low-turnout Hispanic voters for higher ones while maintaining a minority population majority. Deviations from procedural and substantive standards, as well as racially-charged

contemporaneous statements, also provide significant evidence of a discriminatory purpose. The State has presented little evidence concerning the intent of the proposed plan, but the legislative staff who crafted the map and legislators closely involved in the process have provided conflicting testimony. Assessing the credibility of these witnesses and resolving other disputed factual issues cannot be performed until trial.

a. Impact of the Decision

As is indicated in the report of Dr. Handley, the proposed House plan has a retrogressive impact on the minority population in the State of Texas, as the proposed plan contains at least four, and perhaps five, fewer minority ability-to-elect districts than exist in the benchmark plan. *See* Handley House Rep. at 1, 8-10, 13. This significant impact is highly relevant to the discriminatory purpose analysis. Moreover, there is other evidence of the impact of the proposed plan on the State's minority population. As pointed out by Dr. Arrington, the State ignored the substantial increase in the minority population, especially in the Dallas-Fort Worth area, in proposing a plan that actually reduced minority electoral power. *See* Arrington Rep. ¶¶ 52-60. Although the proposed House plan does not include the visually striking evidence of cracking, in the manner of the proposed Congressional plan, *see infra*, the proposed House plan uses visually subtle but no less direct methods to effectuate a retrogression in Hispanic representation in Dallas-Fort Worth and Harris County. Specifically, these counties exhibit wide variation in district populations to protect incumbents from districts

drawn prior to ten years of explosive minority population growth. *See id.* ¶¶ 104-107. Moreover, in Harris County, the two incumbents who are paired in District 137 are the candidates of choice of the Hispanic community in Hispanic-controlled districts, either alone or as part of a cohesive coalition. *See id.* ¶¶ 38, 41. Traditional districting criteria did not prevent the State from creating additional ability-to-elect districts. *See id.* ¶¶ 61-76.

In addition, the State split precincts, drawing district boundaries at a level of detail at which political data is not available and lines can only be guided by racial data, to eliminate minority election districts and to disadvantage minority voters. *See id.* ¶¶ 77-83, 103-104.

Proposed District 41 is a particularly striking example of this practice, as its boundaries split 14 precincts and include 69.5% of the Anglo VAP of the split precincts but only 40.2% of the Hispanic VAP of the split precincts. *See* Arrington Rep. at 30. The State's employees indicated that they followed guidance from a state legislator concerning which portions of split precincts would be politically favorable, *see* Interiano Dep. at 174:4-24, Oct. 20, 2011 (Ex. 19); Downton Dep. at 128:1-18, Oct. 20, 2011, but that same legislator denied instructing state employees to split precincts in order to include anything more than his home and the high school he had attended and to exclude the home of another legislator, *see* Peña Dep. at 97:16-102:15, 157:5-173:4., Oct. 19, 2011 (Ex. 20). The legislator denied any local knowledge of whether certain portions of split precincts were more likely than others to favor him politically. *See, e.g.*, Peña Dep.at 163:17-25,

168:17-169:5, 172:19-173:4, Oct. 19, 2011. Because political data is not available at the census block level, the only remaining possibility is that the State drew the lines on the basis of race, as the outcome strongly suggests.

In addition to the general evidence above, District 117 provides an example in the proposed House plan of the same strategy applied to District 23 in the proposed Congressional plan, whose effect is discussed above. Again the State removed high turnout Hispanic voters and replaced them with Hispanic voters known to turn out at a lower rate. *See* Arrington Rep. ¶¶ 17, 26-27, 144; Farias Decl. ¶¶ 11-16 (Ex. 21); Martinez Fischer Decl. ¶¶ 6-9, 15-18; Garza Dep. at 40:8-12, 42:15-18, Oct. 19, 2011 (Ex. 22); Ruiz Mendelsohn ¶¶ 5-9; Rodriguez Decl. ¶¶ 4-6. And again the State maintained the superficial appearance of a Hispanic ability-to-elect district by maintaining Hispanic population levels. *See* Martinez Fischer Decl. ¶¶ 15-16; Garza Dep. at 58:16-24, Oct. 19, 2011; *see also LULAC*, 548 U.S. at 441 (criticizing the maintenance of nominal population majorities "to create the façade of a Latino district").

b. Sequence of Events

As was also the case with regard to the Congressional plan, the House redistricting process was a secretive process not effectively open to minority representatives of choice. *See* Arrington Rep. ¶¶ 108-129; V. Gonzales Decl. ¶¶ 5-10, 19-24. The concerns of these representatives were not taken into account by those who were in charge of the Texas redistricting process. Most changes to

minority ability-to-elect districts made during deliberations on the House plan on the House floor were trivial, and most such districts were not changed at all. As Dr. Arrington states, "From the perspective of minority ability to elect representatives of their choice, the entire process after introduction of the Chairman's plan meant nothing." Arrington Rep. ¶ 121. Minority legislators' efforts to amend the plan were tabled and later withdrawn. In contrast, majority legislators' amendments were generally accepted. Amendments by minority legislators to increase the number of ability-to-elect districts were quickly tabled. *See* HB 150 – Debate, Texas House Journal ("Floor Debate"), S97-256 (Apr. 27, 2011) (Ex. 23).

c. Procedural and Substantive Departures

As indicated above, the secretive House redistricting process afforded minority representatives limited access to effective participation. V. Gonzales Decl. ¶¶ 5-10, 19-24. This limited the ability of those who would advocate for the creation of additional minority ability-to- elect districts to influence the process. Arrington Rep. at ¶¶ 3, 127-129. Examples include an extremely truncated hearing schedule after the Chairman of the Redistricting Committee released his proposed plan, composed of two hearings on a Friday and a Sunday, and suspension of the "five-day posting rule" for proposed legislation, *see, e.g.*, Gonzales Dec. ¶¶ 19-24, despite the admission that the State depended on the committee process to determine statewide VRA compliance. *See* Downton Dep. at 133:19-135:7, Oct. 20, 2011 (acknowledging that the Chairman's plan was retrogressive, even under the

State's population-based metrics).

As a matter of substance, the State claimed to have relied on a "member-driven" consensus process to protect incumbents of all parties and – when that process failed – to assemble a plan that met the approval of the House leadership. *See Perez* Tr. 1427 (Interiano); at Downton Dep. at 77:7-13, Oct. 20, 2011. As Dr. Arrington's report indicates, however, the line drawers, operating away from public view, broke from a consensus or partisan motivation and drew lines on a purely racial basis when partisan data was unavailable. *See* Arrington Rep. ¶ 83 ("[T]hese changes were not random, but had a statistically significant racial pattern.").

The proposed House plan also deviates from a substantive policy against splitting precinct lines. Not only did House leadership argue against splitting precincts as a general policy, *see id.* ¶ 77, but splitting precincts on the basis of race at the block level in some instances create districts that – according to the best available election data – perform worse than districts drawn on the basis of whole precincts, *see id.* ¶¶ 17-20.[13] Nevertheless, the proposed House plan splits 412 precincts, *id.* ¶ 77. Moreover splitting precincts results in the need to create more or different precincts and can result in additional expense, disruption, and confusion of

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[13] Because election returns are aggregated at the precinct level and cannot be disaggregated, if a cluster of Anglo voters are split out of a predominantly Hispanic and Democratic precinct, those white voters will appear to be Democrats in an election analysis of a proposed district, regardless of their actual political affiliation. See id. ¶ 80.

elections officials and voters, and reduction in voter participation. *See id.* ¶ 84-96; *see also* V. Gonzales Decl. ¶ 15; Longoria Decl. ¶ 14.

Finally, the House plan deviates from traditional redistricting principles. As Dr. Arrington indicates, this was certainly the case given the State's inconsistent application of Texas's constitutional County Line Rule in both Nueces and Harris counties. Arrington Rep.

Moreover, the districts deviate substantially from the equal population principle in a manner that cannot be justified by reasonable state policies, particularly within large, urban counties. *See id.* ¶¶ 104-107. In one particularly flagrant instance, the district with the highest Anglo population in predominantly Hispanic Hidalgo County – District 41 – is underpopulated by 7,399 persons and borders on a district that is overpopulated by 5,856 persons. V. Gonzales Decl. ¶ 17.

d. Contemporaneous Statements

Statements made by those engaged in the State House redistricting process provide further indicia of discriminatory intent. Most tellingly, Representative Beverly Woolley, who led the redistricting process in Harris County that had excluded participation by any minority members of the Harris County delegation, told a group of minority representatives, "[Y]ou all are protected by the Voting Rights Act and we are not. We don't want to lose these people due to population growth in the county, or we won't have any districts left." Coleman Decl. ¶¶ 9-14 (Ex. 24) (approximating quote). Moreover, Representative John Garza of District 117

first requested that his district extend into a predominantly Anglo area of Bexar County, and when he was rebuffed he requested inclusion of particular territory in his district that would maintain only the superficial appearance of Hispanic electoral control, specifically telling Representative Joe Farias of District 118 that he needed "more Mexicans in [his] district" while rejecting those in areas where Hispanics are politically organized. Farias Decl. ¶¶ 11-16; *see also* Martinez Fischer Decl. ¶¶ 6-9. Finally, members of the House Redistricting Committee and other Anglo members of the Harris County delegation repeatedly suggested to Representative Scott Hochberg, a senior Anglo Democrat, that the district in which he had been drawn with Representative Hubert Vo, a junior Asian Democrat and one of only two Asian Americans in the Texas House, would favor Hochberg being reelected. *See* Hochberg Decl. ¶¶ 2-3. This decision made little sense from a partisan perspective and can only be explained by intent to break the multiethnic coalition that had supported Representative Vo. *See id.*

Using the *Arlington Heights* framework as set forth above, there are clearly disputed material facts at issue with regard to the existence of discriminatory purpose in the formulation of the State's Congressional and House plans. The State has clearly not met its burden of demonstrating the absence of such discriminatory intent.

3. There Are Genuine Disputes of Material Facts Regarding Whether the Proposed Congressional Plan Was Adopted with Discriminatory Intent.

The Court should deny the State's request for summary judgment regarding the purpose of the proposed congressional plan because substantial evidence creates a genuine dispute of material facts concerning the possible presence of a discriminatory purpose. In proposed District 23, retrogression occurred using techniques that suggest a discriminatory purpose, including setting boundaries at a level of detail where race is the only available data and substituting low- turnout Hispanic voters for higher ones while maintaining a minority population majority. Proposed districts in the Dallas-Fort Worth area were purposely manipulated to decrease current and future minority voting strength. Deviations from procedural and substantive standards, as well as contemporaneous statements, also provide significant evidence of a discriminatory purpose.

a. Impact of the Decision

As indicated above, the State's proposed plan for the Texas Congressional delegation retrogresses from the benchmark plan, with a substantial adverse impact on the ability of the State's minority population to elect their candidates of choice. But the evidence suggests other impacts as well. The State chose not to propose any new additional minority ability-to-elect districts and removed hundreds of thousands of minority voters from districts in which they could elect candidates of choice, in the face of a substantial increase in State population driven in very large part by large increase in the Hispanic population, an increase that led to the allocation of four new Congressional seats. This suggests both possible dilution as well as possible retrogression of

minority voting strength in Texas. Indeed, as the Court is aware, there is pending vote dilution litigation under Section 2 of the Voting Rights Act in Texas, in which the parties have just completed final briefing. As the Supreme Court noted in *Bossier I*, "evidence of a plan's dilutive impact may be relevant to the Section 5 purpose inquiry." 520 U.S. at 487. In that regard, the Court noted:

> As we observed in *Arlington Heights*, the impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions. Thus, a jurisdiction that enacts a plan having a dilutive impact is more likely to have acted with a discriminatory intent to dilute minority voting strength than a jurisdiction whose plan has no such impact. A jurisdiction that acts with an intent to dilute minority voting strength is more likely to act with an intent to worsen the position of minority voters – *i.e.*, an intent to retrogress – than a jurisdiction acting with no intent to dilute. The fact that a plan has a dilutive impact therefore makes it "more probable" that the jurisdiction adopting that plan acted with an intent to retrogress than "it would be without the evidence." To be sure, the link between dilutive impact and intent to retrogress is far from direct, but "the basic standard of relevance . . . is a liberal one," and one we think is met here.

Id. (internal citations omitted).

Besides the above, there is additional evidence of the impact of the proposed Congressional plan that can advise a determination of prohibited intent. Specifically with regard to proposed District 23 and some districts in the Dallas-Fort Worth area (Dallas and Tarrant Counties), the minority population was purposely manipulated to decrease current and future minority voting strength. In the proposed plan, the State split Maverick County between two districts – District 23 and District 28 – and made other changes in the San Antonio area that removed high turnout Hispanic voters from District 23 and replaced them with Hispanic communities that turn out to vote at a lower rate, as well as with Anglo voters. *See* Arrington Rep. ¶¶ 141-145; Cantu Decl. ¶¶ 6-12 (Ex. 25); Hernandez Decl. ¶¶ 6-9 (Ex. 26); Ruiz Mendelsohn Decl. ¶¶ 5-9; and Rodriguez Decl. ¶¶ 4-6. In so doing, the State has created a proposed district that modestly increases the Hispanic population, but will actually be less likely to provide Hispanic voters with the ability to elect their candidate of choice, in order to protect the Republican incumbent. *See* Arrington Rep. ¶¶ 141-145. This was part of an intentional strategy "to limit the creation of minority election districts as much as possible while presenting the appearance of non-retrogression based on unreliable, misleading bright line tests based on [voting-age population ("VAP")] or CVAP." *Id.* ¶ 194.

In Harris County, the State cracked the large Hispanic population, which is substantial enough to form the core of an additional minority district, and submerged it in six Anglo- dominated districts. *See* Arrington Rep. ¶¶ 146-147. In addition, in the

Dallas-Fort Worth area, the State has pulled strangely-shaped minority population areas out of certain districts in order to submerge them in larger Anglo populations and to reduce minority voting strength. *See id.* ¶¶ 148-151; Rosas Decl. ¶ 13-18 (Ex. 27); Veasey Decl. ¶¶ 9-11 (Ex. 28). The data utilized in making some of these changes were race-based, as opposed to partisan. *See* Arrington Rep. ¶¶ 164-173. While race and political affiliation may often coincide, race cannot be used as a proxy for political persuasion in the redistricting process. *Bush v. Vera*, 517 U.S. 952, 968 (1996) (plurality op.).

b. Historical Background of the Decision

The action of the State in devising the proposed Congressional plan must be viewed in the context of redistricting litigation involving the State's benchmark Congressional plan resolved only five years ago. That benchmark plan was finally completed by a federal court in 2006 following the Supreme Court's decision in *LULAC*, in which the Court found that previous State action with regard to Congressional District 23 violated Section 2 of the Voting Rights Act and required a redrawing of that District. *See* 548 U.S. at 442-43.

As indicated above, the State has created a proposed District 23 that appears to be a better Hispanic district if one looks only at population but is actually a lower performing district when one looks at election data, in order to protect the Republican incumbent. This action on the part of the State is strikingly similar to the redrawing of District 23 a decade earlier, which drew the

following strong rebuke from Justice Kennedy:

> [...T]he Latinos' diminishing electoral support for Bonilla indicates their belief he was "unresponsive to the particularized needs of the members of the minority group." In essence the State took away the Latinos' opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation. Even if we accept the District Court's finding that the State's action was taken primarily for political, not racial, reasons, the redrawing of the district lines was damaging to the Latinos in District 23. The State not only made fruitless the Latinos' mobilization efforts but also acted against those Latinos who were becoming most politically active, dividing them with a district line through the middle of Laredo.
>
> [T]he reason for taking Latinos out of District 23, according to the District Court, was to protect Congressman Bonilla from a constituency that was increasingly voting against him. The Court has noted that incumbency protection can be a legitimate factor in districting, but experience teaches that incumbency protection can take various forms, not all of them in the interests of the constituents. If the justification for incumbency protection is to keep the constituency intact so the officeholder is accountable for promises made or broken, then the protection seems to accord with

> concern for the voters. If, on the other hand, incumbency protection means excluding some voters from the district simply because they are likely to vote against the officeholder, the change is to benefit the officeholder, not the voters. By purposely redrawing lines around those who opposed Bonilla, the state legislature took the latter course. This policy, whatever its validity in the realm of politics, cannot justify the effect on Latino voters. The policy becomes even more suspect when considered in light of evidence suggesting that the State intentionally drew District 23 to have a nominal Latino voting-age majority (without a citizen voting-age majority) for political reasons. This use of race to create the facade of a Latino district also weighs in favor of appellants' claim.

LULAC, 548 U.S. at 440-41. This stark resemblance of the State's action concerning the proposed Congressional plan to that action found by the Court in *LULAC* as evidencing intentional discrimination during the previous redistricting cycle, suggests strongly that such action "bears the mark" of intentional discrimination.

c. Sequence of Events

As set forth in Dr. Arrington's and other declarations, the Congressional redistricting process was a secretive process with little or no opportunity for minority representatives of choice to participate. V. Gonzales Decl. ¶¶ 7-10, 19-24. Even after the original proposed Congressional plan, developed in

secret, was introduced, minority efforts to amend the plan were to no avail. Farias Decl. ¶ 17; Martinez Fischer Decl. ¶ 12; V. Gonzales and Martinez Fischer Dep. 58:8-20, July 28, 2011 (Ex. 29). The majorities in the House and Senate rejected any amendments to the Redistricting Committees' plan that would have increased the number of minority ability-to-elect districts, and there is no evidence that rejection of the proposed amendments, and the overall limitation of minority ability-to-elect districts in the proposed plan, was necessary in order to comply with traditional redistricting principles. *See* Arrington Rep. ¶¶ 174-193; V. Gonzales Decl. ¶¶ 25-26.

d. Procedural and Substantive Departures

Again, the Congressional redistricting process afforded little access to minority representatives. According to those directly affected by this secretiveness, the process was far less open than it had been in the past, evidencing an extreme intent to limit or eliminate minority participation in this redistricting cycle and, in turn, to limit minority ability-to-elect districts. *See Perez* Tr. at 92:1-23 (Martinez Fischer); V. Gonzales Decl. ¶¶ 7-10, 19-24; Veasey Decl. ¶¶ 5-8; Veasey Dep. at 23:6-17, 26:14-22, Aug. 29, 2011 (Ex. 30). Moreover, notwithstanding the State's claim of purely partisan reasoning behind the process and the substantive changes made to benchmark districts, the state's line drawers, operating away from public view, drew the lines with racial block-level data to substitute for the lack of partisan data available below the precinct level. "The racial nature of these actions is statistically convincing." Arrington Rep. ¶ 195.

e. Contemporaneous Statements

While the existence of contemporaneous statements of direct racial intent related to current redistricting efforts may be rare, the email exchanges between United States Congressional representatives and staff, and State officials involved in devising the State's plans, provide riveting circumstantial evidence bearing witness to the process discussed above, where data as to race and ethnicity rather than partisan data drove the line drawing for the proposed Congressional plan, and where the State sought to exclude minority representatives from the redistricting process. These "real time" discussions as set out at length in Dr. Arrington's report provide substantial evidence of the discriminatory intent of the framers of the State's proposed Congressional plan. *See id.* ¶¶ 181-192.

III. CONCLUSION

As set forth above, there are numerous disputed issues of material fact with regard to the retrogressive effect and discriminatory purpose of the State's redistricting plans for its delegation to the United States Congress and the State House of Representatives, and the State is not entitled to judgment as a matter of law. The State's motion for summary judgment should be denied.

Date: October 25, 2011

RONALD C. MACHEN, JR.

United States Attorney District of Columbia

Respectfully submitted,

THOMAS E. PEREZ Assistant Attorney General
Civil Rights Division

/s/ Timothy F. Mellett

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 1:11-cv-01303

STATE OF TEXAS,

Plaintiff,

v.

UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States,

Defendants.

(RMC-TBG-BAH)
Three-Judge Court

Filed 09/23/11
Document 53

UNITED STATES AND DEFENDANT-INTERVENORS IDENTIFICATION OF ISSUES

Pursuant to the Court's Order dated September 22, 2011, the United States, Defendant Eric H. Holder, Jr., Attorney General of the United States ("the Attorney General"), and Defendant-Intervenors hereby identify those aspects of the proposed redistricting plans for the Texas House of Representatives and Texas Congressional delegation that the Defendants and Defendant-Intervenors contend violate of Section 5 of the Voting Rights Act.

V. Position of the United States

C. State House Plan

On November 28, 2001, in *Balderas v. Texas*, 2001 WL 34104833, Civ. No. 6:01CV158 (E.D. Tex. Nov. 28, 2001) (per curiam), a three-judge district court adopted a court-ordered redistricting plan for the Texas House of Representatives, based on the 2000 Census. As a court-ordered plan, that plan was not subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case. Ten years later, the Texas Legislature passed House Bill 150, containing a new redistricting plan for the Texas House of Representatives, based on the 2010 Census, and the Governor signed it on June 17, 2011. Under Texas law, that plan was to become effective on August 29, 2011. The plan contained in House Bill 150 is the proposed plan for purposes of this case.

The proposed redistricting plan for the Texas House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The United States contends that the Plaintiff's proposed redistricting plan for the Texas State House of Representatives has a purpose and will have a retrogressive effect that is prohibited by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c(a).

1. Effect

When compared to the benchmark plan, the proposed House plan will have a retrogressive effect

that violates Section 5 of the Voting Rights Act in that it will diminish the ability of citizens of the United States, on account of race, color or membership in a language minority group, to elect their preferred candidates of choice to the Texas House of Representatives. See Department of Justice's Guidance Concerning Redistricting under Section 5 of the Voting Rights Act, 76 Federal Register 7470 (February 9, 2011); Department of Justice's Revision of Procedures for Administration of Section 5 of the Voting Rights Act of 1965, 76 Fed. Reg. 21239 (April 15, 2011). The United States will address the legal standard concerning retrogressive effect in its brief in opposition to the State of Texas' Motion for Summary Judgment [Docket #41]. The retrogression from the benchmark to the proposed plan stems from changes to as many as five districts: 33, 35, 41, 117, and 149.

Hispanic citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 33 benchmark districts: 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 117, 118, 119, 123, 124, 125, 140, 143, 145, and 148. Black citizens have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 12 benchmark districts: 22, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147. Minority citizens (black and/or Hispanic) have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following four benchmark districts: 27, 46, 120, and 137. No further determination is necessary with respect to these

districts because these districts are not at issue. Minority citizens may also have the ability to elect their preferred candidates of choice to the Texas House of Representatives in 149, but as noted below, our analysis has not been completed. In total, there are 50 districts in the benchmark plan in which minority citizens have or may have the ability to elect their preferred candidates of choice to the Texas House of Representatives.

Hispanic citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 29 proposed districts: 31, 34, 36, 37, 38, 39, 40, 42, 43, 51, 74, 75, 76, 77, 79, 80, 90, 103, 104, 116, 118, 119, 123, 124, 125, 140, 143, 145, and 148. Black citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following 13 proposed districts: 22, 27, 95, 100, 109, 110, 111, 131, 139, 141, 142, 146, and 147. Minority citizens (black and/or Hispanic) will have the ability to elect their preferred candidates of choice to the Texas House of Representatives in the following three proposed districts: 46, 120, and 137. No further determination is necessary with respect to these districts because these districts are not at issue. In total, there are 45 districts in the proposed plan in which minority citizens will have the ability to elect their preferred candidates of choice to the Texas House of Representatives.

The United States contends that the proposed House plan will not change the ability of any citizens, on account of race, color or membership in a language minority group, to elect their preferred

candidates of choice in any of the remaining 145 districts. To the extent that such citizens in those districts have the ability to elect under the existing plan, they will have the ability to do so under the proposed plan. To the extent that such citizens in those districts do not have the ability to elect under the existing plan, they will not have the ability to do so under the proposed plan.

Regarding the five districts at issue, the United States claims the following:

House District 33: Under the existing plan, House District 33 is located in Nueces County and encompasses most of Corpus Christi, Texas. Hispanic citizens are currently able to elect their preferred candidate of choice to the House in this district despite the presence of racially polarized voting. Under the proposed plan, House District 33 will be moved to Collin and Rockwall counties near Dallas, and most of the existing district's population will be reallocated to proposed House District 32. Hispanic citizens will not be able to elect candidates of their choice in proposed House District 32 or proposed House District 33 because of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 35: Under the existing plan, House District 35 is located in south Texas and includes all of Atascosa, Bee, Goliad, Jim Wells, Karnes, Live Oak, and McMullen counties. Hispanic citizens are currently able to elect their preferred candidates of choice to the House in this district despite the presence of racially polarized voting.

Under the proposed plan, House District 35 will be substantially reconfigured to remove Goliad, Jim Wells and Karnes counties and to add Duval, La Salle, and San Patricio counties. Hispanic citizens who will remain in proposed House District 35 will not be able to elect candidates of their choice because of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 41: Under the existing plan, House District 41 is located in Hidalgo County in south Texas. Hispanic citizens are currently able to elect their preferred candidates of choice to the House in this district despite the presence of racially polarized voting. Under the proposed plan, House District 41 will remain in Hidalgo County but will be substantially reconfigured. The proposed district has a large number of VTD splits, which has an impact on the accuracy of election results allocated to the proposed district. Hispanic citizens who will remain in proposed House District 41 will not be able to elect candidates of their choice because of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 117: Under the existing plan, House District 117 is located in western Bexar County near San Antonio, Texas. Hispanic citizens are currently able to elect their preferred candidates of choice to the House in this district despite the presence of racially polarized voting. Under the proposed plan, House District 117 will be reconfigured only moderately, but enough to change the district's performance. Hispanic citizens who

remain in proposed House District 117 will not be able to elect candidates of their choice because of the persistence of racially polarized voting. This will result in a net loss of Hispanic citizens' ability to elect one candidate of choice to the House.

House District 149: Under the existing plan, House District 149 is located in Harris County and encompasses the Alief community in the City of Houston, Texas. The district has a combined minority-citizen voting-age population of 61.3 percent and has elected a Vietnamese-American legislator, Hubert Vo, since 2004 despite the presence of racially polarized voting. In the proposed plan, House District 149 will move to Williamson County in central Texas, and it will have a combined minority-citizen voting-age population of less than 23 percent.

The United States has not yet reached any conclusion about this district's performance, and its investigation is on-going. As a result, District 149 remains at issue, and there is the potential for a net loss of the ability to elect one additional candidate of choice to the House on account of race or color or membership in a language minority group.

2. Purpose

The proposed House plan has a prohibited purpose that violates Section 5 of the Voting Rights Act in that it was adopted, at least in part, for the purpose of diminishing the ability of citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates of choice to the Texas House of Representatives. *See* Department of

Justice's Guidance Concerning Redistricting under Section 5 of the Voting Rights Act, 76 Federal Register 7470 (February 9, 2011); Department of Justice's Revision of Procedures for Administration of Section 5 of the Voting Rights Act of 1965, 76 Fed. Reg. 21239 (April 15, 2011). The United States disagrees with the legal standard proposed by the State of Texas and will address the proper standard in its brief in opposition to the State of Texas' Motion for Summary Judgment [Docket #41]. The evidentiary basis for this contention is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). The United States has, however, identified the boundaries of proposed House Districts 32, 41, 93, 105, 117, and the elimination of Districts 33 and 149 in the benchmark as among the areas of particular concern. In addition, the United States has not yet determined whether the proposed plan has any other areas of concern or any other purpose or purposes that are prohibited by Section 5, and its investigation is on-going.

D. Congressional Plan

The United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census. After the 2000 Census, the State of Texas was entitled to 32 representatives, and federal law then required the State to redistrict. On August 4, 2006, a three-judge district court, in *LULAC v.*

Perry, 2006 WL 3069542, Civ. No. 2:03-CV-354 (E.D. Tex. Aug. 4, 2006) (per curiam), adopted a redistricting plan for Texas' congressional delegation, based on the 2000 Census. As a court-ordered plan, that plan was not subject to preclearance under Section 5 of the Voting Rights Act. That plan was the last plan in force or effect and is therefore the benchmark plan for purposes of this case.

After the 2010 Census, the State of Texas was entitled to four new representatives in Congress, for a total of 36 representatives, and federal law once again required the State to redistrict. The Texas Legislature then passed Senate Bill 4, containing a new congressional redistricting plan, based on the 2010 Census, and the Governor signed it on July 18, 2011. The plan contained in Senate Bill 4 is the proposed plan for purposes of this case.

The proposed redistricting plan for the Texas delegation to the United States House of Representatives is a "standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The United States contends that the Plaintiffs proposed redistricting plan for the United States House of Representatives (Congressional plan) will have an effect that is prohibited by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c(a). The United States does not have sufficient knowledge to make a determination whether the proposed Congressional plan was enacted with a discriminatory purpose in violation of Section 5, and thus seeks discovery concerning this issue.

1. Effect

When compared to the existing plan, the proposed Congressional plan will have a retrogressive effect in that it will diminish the ability of citizens of the United States, on account of race, color or membership in a language minority group, to elect their preferred candidates of choice to the United States House of Representatives. The United States will address the legal standard in its brief in opposition to the State of Texas' Motion for Summary Judgment [Docket #41]. The retrogression from the benchmark to the proposed plan stems in part from changes to Districts 23 and 27, which provide Hispanic citizens with the ability to elect candidates of their choice in the benchmark plan but not the proposed; and the addition of new Districts 34 and 35 as districts in which Hispanic citizens have the ability to elect candidates of their choice, in light of the increase in the total number of Texas Congressional districts following the release of the 2010 Census.

Hispanic citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven benchmark districts: 15, 16, 20, 23, 27, 28, and 29. Black citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three benchmark districts: 9, 18 and 30.

Hispanic citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following seven proposed districts: 15, 16, 20, 28, 29, 34 and

35. Black citizens will have the ability to elect their preferred candidates of choice to the United States House of Representatives in the following three proposed districts: 9, 18 and 30.

The United States contends that the proposed Congressional plan will not change the ability of any citizens, on account of race, color or membership in a language minority, to elect their preferred candidates of choice in any of the remaining 30 benchmark districts, with the exception of Districts 23 and 27 as discussed below. To the extent that such citizens in those districts have the ability to elect under the existing plan, they will have the ability to do so under the proposed plan. To the extent that such citizens in those districts do not have the ability to elect under the existing plan, they will not have the ability to do so under the proposed plan. With regard to new districts in the proposed plan, as indicated, new Districts 34 and 35 in the proposed plan are districts in which Hispanic citizens have the ability to elect candidates of their choice. New Districts 33 and 36 in the proposed plan are districts in which minority citizens do not have the ability to elect their preferred candidates of choice.

The United States believes that benchmark Congressional District 23 may also be the subject of dispute. Under the existing plan, Congressional District 23 is located in southwest Texas and encompasses seventeen whole counties and parts of three other counties. Hispanic citizens are currently able to elect their preferred candidate of choice to Congress in Congressional District 23 despite the presence of racially polarized voting. Under the

proposed plan, Congressional District 23, while located in the same general area in Texas, will encompass twenty-five whole counties and parts of five other counties. Hispanic citizens will not be able to elect candidates of their choice in proposed Congressional District 23 because of the persistence of racially polarized voting.

Based on information currently available to the United States, the State's position is unclear concerning whether benchmark District 23 is a district in which Hispanic citizens have or do not have the ability to elect candidates of their choice. On page 6 of the State's Memorandum in Support of its Motion for Summary Judgment filed September 14, 2011 [Docket #41], the State indicates that benchmark District 23 is an "Hispanic opportunity district." This appears inconsistent with the expert report of the State's own expert in the *Perez v. Perry* redistricting litigation recently tried in the United States District Court for the Western District of Texas (C.A. No. Sa-11-CA-360-OLG-JES-XR), in which Dr. John Alford wrote that benchmark District 23 is not an opportunity district for Hispanic voters. In deposition and at trial, Dr. Alford's opinion is more equivocal about the performance of District 23 in the benchmark, noting that the district elected a Hispanic candidate of choice in 2006 and 2008, and he states that District 23 in the proposed plan performs worse than in the benchmark plan. Thus, there remains an issue between the United States and the State concerning District 23, and whether the State's changes to this District in the proposed plan result in a loss of Hispanic citizens' ability to elect one candidate of choice to Congress.

The United States believes that benchmark Congressional District 27 may also be the subject of dispute. Under the existing plan, Congressional District 27 is located in extreme southeast Texas, bordering on both Mexico and the Gulf of Mexico. It includes all of Kenedy, Kleberg, Nueces and Willacy counties, and parts of Cameron and San Patricio counties. Hispanic citizens are currently able to elect their preferred candidates of choice to Congress in this District despite the presence of racially polarized voting. Under the proposed plan, House District 27 will be substantially reconfigured and moved north to remove Kenedy, Kleberg and Willacy counties, as well as its previous Cameron County population, and to add the whole counties of Aransas, Calhoun, Jackson. Lavaca, Matagorda, Refugio, Victoria and Wharton, and parts of Bastrop, Caldwell and Gonzales counties. All of Nueces County and a slightly larger portion of San Patricio County remain in proposed District 27. Hispanic citizens will not be able to elect candidates of their choice in proposed District 27 because of the persistence of racially polarized voting.

Based on information currently available to the United States, the State's position is unclear concerning whether benchmark District 27 is a district in which Hispanic citizens have or do not have the ability to elect candidates of their choice. On page 6 of the State's Memorandum in Support of its Motion for Summary Judgment filed September 14, 2011 [Docket #41], the State indicates that benchmark District 27 is an "Hispanic opportunity district." This appears inconsistent with the expert report of the State's own expert in the *Perez v. Perry*

redistricting litigation recently tried in the United States District Court for the Western District of Texas (C.A. No. Sa-11-CA-360-OLG-JES-XR), in which Dr. John Alford wrote that benchmark District 27 is not an opportunity district for Hispanic voters. At deposition and trial, Dr. Alford counts District 27 in the benchmark as an opportunity district, and he stated that the proposed District 27 does not provide that opportunity because it has flipped from majority Hispanic to majority Anglo. Thus, there remains an issue between the United States and the State concerning District 27, and whether the State's changes to this District in the proposed plan result in a loss of Hispanic citizens' ability to elect one candidate of choice to Congress.

2. Purpose

The United States has not yet determined whether the proposed plan has any purpose or purposes that are prohibited by Section 5, and its investigation is on-going. Based on our preliminary investigation, it appears that the proposed plan may have a prohibited purpose in that it was adopted, at least in part, for the purpose of diminishing the ability of citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates of choice to Congress. The evidentiary basis for this contention is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

VI. Positions of Defendant-Intervenors

A. Davis Intervenors

The closed redistricting process through which state legislative leaders in Texas shut out input from minority communities and the leaders who represent them, including but not limited to the failure to adopt proposed alternatives that would have reflected the rapid and concentrated growth in minority communities, resulted in a discriminatory (retrogressive) effect and also evidence a discriminatory purpose in violation of Section 5. See 28 C.F.R. §§ 51.54 (referencing the Arlington Heights factors to determine discriminatory purpose and the Beer standard to determine discriminatory effect) 51.57 (applying the Arlington Heights framework among other factors to determine discriminatory purpose), 51.59 (laying out a multi-factor test for whether a plan is retrogressive); DOJ Redistricting Guidance at 7471-72 (same). Like the Department of Justice, the Davis-Veasey Defendant-Intervenors believe that the changes made to existing congressional districts 23 and 27 will retrogress minority voting strength in violation of Section 5, and further take the position that these changes, and Plan C185, were adopted with a racially discriminatory purpose. The Davis-Veasey Intervenors also challenge the state's rejection of alternative plans that created two new minority opportunity congressional districts in the Dallas-Fort Worth area, where the state has "packed" minority population into district 30 and otherwise "cracked" or fragmented minority voters among six Anglo-controlled districts. Such alternatives would have more fairly reflected the dramatic growth in

minority population that resulted in the state's additional congressional seats in the Dallas and Tarrant County region of North Texas and in South Texas.[1] Given the dramatic minority population growth over the last decade, the Texas Congressional redistricting plan should have included approximately 14 districts (out of 36) in which minority voters could have elected the candidate of their choice and effectively participated in the political process: three in the Dallas and Tarrant County region; three in Harris County region; and eight in the area that extends from Travis County to and including South and West Texas.

The failure to create any new minority opportunity congressional districts in the 2011 proposed plan despite rapid growth in minority communities and the addition of four Congressional seats retrogresses racial and language minorities with respect to their effective exercise of the electoral franchise. In the 2006 Amendments, Congress intended to prohibit covered jurisdictions from keeping minority voters "in their place" by perpetuating unconstitutional conditions or making them worse, H. Rep. No. 109-478, at 68 (2006); see also S. Rep. No. 109-295, at 16 (2006). The failure to do so is a factor in the discriminatory purpose test

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[1] Dallas and Tarrant Counties contain over 2.1 million African-American and Hispanic residents, yet only one of the 8 congressional districts that enter the two counties provide minority voters with an opportunity to elect their candidate of choice. Over the decade, the Anglo population in Dallas and Tarrant counties combined fell by 156,472 while the African-American population increased by 152,825 and the Hispanic population increased by 440,898.

and also is clearly relevant to the discriminatory effect test. See 28 C.F.R. §§ 51.54, 51.59(b), 51.57(e). In Texas, minority voters had realistic opportunities to effectively participate and elect candidates of choice in eleven districts (CD 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, 30) under the benchmark map (out of 32 districts, or 34.4%), and under the State's proposed 2011 plan (C185), minority voters have realistic opportunities to elect candidates of choice in only 10 congressional districts (Districts 9, 15, 16, 18, 20, 28, 29, 30, 34, 35) (out of 36 districts, or 27.8%). Thus, the proposed plan reduces the number of congressional districts where minority voters have an effective opportunity to participate in the political process and to elect candidates of their choice from 11 to 10, even though the congressional delegation has been expanded from 32 to 36. That Texas state legislators chose to decrease the number of effective minority districts even though the minority share of the population increased relative to that of Anglos evidences discriminatory intent, among other factors.

B. Mexican American Legislative Caucus Intervenors

As stated in the September 21, 2011 status conference, MALC will focus its participation in this litigation on opposing the State of Texas' request for Section 5 preclearance of the redistricting plans for the state House and the United States Congress. MALC further will principally focus on the purpose and effect of these two plans insofar as they relate to the electoral opportunities of the Hispanic citizens of the State of Texas.

MALC agrees with the United States' identification of the benchmark and proposed plans for the state House and Congress, and the United States' statement that redistricting plans constitute a covered voting change within the meaning of Section 5. Like the United States, MALC will set forth the governing Section 5 legal standards as to discriminatory purpose and discriminatory effect in its brief in opposition to Texas' Motion for Summary Judgment.

1. State House Plan

a. Effect

As to the state House plan's impermissible retrogressive effect, MALC agrees with the United States' statement as to the state House districts at issue with the following qualifications.

First, MALC notes that the retrogression analysis ultimately rests on a determination of whether the electoral opportunity provided by the proposed plan as a whole is less than, the same as, or more than the electoral opportunity provided by the existing plan as a whole. As the United States indicates, this necessarily requires an evaluation of the electoral opportunities in specific House districts, but the ultimate retrogression determination is made on a plan-wide basis, not a district-by-district basis.

Second, it is MALC's position that, in evaluating whether the proposed House plan is retrogressive, the losses of minority opportunity districts identified by the United States, and the additional loss set forth below, are not compensated for in the proposed

House plan by any new House districts in which Hispanic citizens will have the opportunity to elect candidates of choice.

Third, as to the district-specific analysis provided by the United States, MALC sets forth the following additional district at issue:

District 144: The United States' position is that Hispanic citizens do not have an opportunity to elect a candidate of choice in either existing District 144 or proposed District 144. District 144 is located in Harris County. MALC contends that, in the context of polarized voting, Hispanic citizens in existing District 144 have been steadily gaining electoral strength such that this district is one in which Hispanic citizens are nearing the opportunity to elect their preferred candidate. Proposed District 144 has been significantly reconfigured to eliminate the emerging Hispanic electoral opportunity in this district, which will result a loss of Hispanic citizens' opportunity to elect candidates of choice to the House.

b. Purpose

MALC agrees with the United States that the state House plan was enacted with a prohibited discriminatory purpose. MALC's purpose analysis will focus on the manipulation of district boundaries to fragment minority population concentrations and unnecessarily pack other minority voters into particular districts. The analysis will encompass, in part, the districts identified by the United States and MALC with regard to the discriminatory effect analysis. In addition, the manipulation of other district boundaries is relevant to the purpose

analysis, and this includes the proposed alterations to existing Districts 32, 40, 77, 78, 90, 93, 104, 105, 137, 144, and 148. Furthermore, the proposed plan manipulates population variances between districts to advance the State's goal of minimizing the electoral opportunity of Hispanic citizens, which also constitutes indicia of the State's discriminatory purpose in enacting the proposed House plan.

2. Congressional Plan

a. Effect

As to the congressional plan's impermissible retrogressive effect, MALC agrees with the United States' statement as to the congressional districts at issue with the following qualifications.

MALC again notes that the retrogression determination turns on a plan-wide comparison of the existing and proposed plans. In this regard, a circumstance that must be taken into account is that the proposed plan includes four more total districts (36) than the existing plan (32). Thus, while MALC's position is that both the proposed plan and the existing plan include seven districts in which Hispanic citizens have the opportunity to elect candidates of choice, MALC asserts that Hispanic citizens' opportunity to elect candidates of choice in seven districts in the proposed 36-district plan is significantly less than the opportunity to elect candidates of choice in seven districts in the existing 32-district plan, thus rendering the proposed plan retrogressive, in violation of Section 5.

b. Purpose

MALC contends that the proposed congressional redistricting plan was enacted with a discriminatory purpose, in violation of Section 5. MALC contends that, in particular, the configurations selected for existing Districts 6, 12, 23, 26, 27, and 33 exhibit characteristics indicative of discriminatory purpose (including fragmentation of minority population concentrations and packing of other minority citizens into particular districts).

C. Gonzales Intervenors

The Gonzalez Intervenors contend that Hispanic citizens have the ability to elect their preferred candidates of choice to the United States House of Representatives in benchmark Congressional District 25 in addition to the seven benchmark districts identified by the United States as districts in which Hispanic citizens have the ability to elect their preferred candidates of choice. Hispanic citizens will not be able to elect candidates of their choice in proposed Congressional District 25 because of the State's fracturing of the benchmark district's minority and Anglo voters who collectively enabled Hispanic citizens to elect candidates of their choice.

The Gonzalez Intervenors concur with the United States that districts 23 and 27 are also the subject of dispute. The Gonzalez Intervenors further contend that the State's proposed Congressional Plan demonstrates statewide retrogression based on both the number and the percentage of districts in which minority citizens have the ability to elect their preferred candidates of choice in the benchmark versus the proposed plan.

The Gonzalez Intervenors further contend that the State's proposed Congressional Plan has a prohibited purpose in that it was adopted for the purpose of diminishing the ability of citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates of choice to Congress. The evidentiary basis for this contention is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

The Gonzalez Intervenors' allegations regarding retrogression within and among specific districts, statewide retrogression, and discriminatory purpose are subject to modification based on additional discovery.

The Gonzalez Intervenors take no position with respect to the Texas House of Representatives, Texas Senate, or Texas State Board of Education districts.

D. The Texas Legislative Black Caucus, the NAACP, and League of United Latin American Citizens (LULAC-proposed defendant intervenor)

The above Defendant-Intervenors would add that the Voting Rights Act protects minority voters from retrogression of voting practices and procedures involving districts in which minority voters have an established record of winning office, but also voting practices and procedures that will inhibit future minority political success, that diminish gains in

electoral influence achieved by minority voters, and changes that add disproportionate burdens to minority participation generally. Like the United States, we will elaborate on legal issues in response to plaintiff's Motion for Summary Judgment.

The existing districts currently disputed by these Intervenors are described below.

1. Congress

Like the Department of Justice, the above Defendant-Intervenors take issue with the manner in which existing congressional districts 23 and 27 were redrawn, and believe that these changes are retrogressive and were adopted with a racially discriminatory purpose. These Intervenors also challenge the state's rejection of alternative plans that created two new minority congressional districts in the Dallas-Fort Worth area, where the state has "packed" minority population into district 30 and otherwise "cracked" or fragmented minority voters among six Anglo controlled districts. Such alternatives would have more fairly reflected the dramatic growth in minority population that resulted in the state's additional congressional seats. As it is, under the proposed plan the minority proportion of seats in the expanded Texas congressional delegation is reduced from its current proportion. The state also rejected an alternative that would have maintained and enhanced the growing minority population in existing district 2 in the oil refinery areas of the southeastern corner of the state. In addition, we note that, in light of the testimony of plaintiffs' expert (Dr. Alford) and its fragmentation of existing political alliances and

cohesive neighborhoods, district 35 (Austin-San Antonio) should not be seen as an additional minority district for purposes of the Voting Rights Act.

Existing district 25 in Travis County (Austin) involves a rare but effective and long-standing cross-coalition between minority voters and like-minded Anglo voters. Minority voters have enjoyed decisive influence in this district. The state plan fragments this coalition and separates the Travis County Anglo voters from minority voters with whom they might coalesce into separate districts. The plan reorients the district completely so that it runs northward to the fringe of Fort Worth, and reduces the minority percentage of total population from 50.2 percent to 29.7 percent. The change is retrogressive and was adopted with a racial purpose.

2. Senate

Senate District 10 in Tarrant County, (Fort Worth) was identified by the State in 2001 as a district which would increase in minority population and in time offer minority voters an opportunity to elect a senator of their choice. The minority percentage in the district increased from 43.4 percent to 52.4 percent, and minority voters were able to elect a candidate of their choice in 2008. The proposed plan lowers the minority population to 45.5 percent. In doing so the plan most notably removes an 80.2 percent minority area and submerges it in district 22 (38.6% minority), and moves a large part of an established minority community in northwest Fort Worth to district 12 (38.9% minority). The plan replaces these areas with heavily Anglo areas. The

plan disrupts long-established and cohesive minority political communities and under the new plan minority voters will no longer be able to elect a representative of their choice. Alternatives were available that enhanced the minority share of district population, but these were rejected by the state. The change is retrogressive and was adopted with a racially discriminatory purpose.

In District 15 in Harris County (Houston), the black and Hispanic percentage of total population dropped from 72.3 percent to only 66.7 percent, a level which the experience of other Texas districts is tenuous at best for minority voters. There was no need for such a reduction, as shown by a plan supported by the TLBC with a 71.5 percent black/Hispanic district 15. The reduction in minority voting strength flowed from the State's choice of transferring an Anglo area from adjacent district 13 in Harris County, in which was under-populated (needed to add rather than remove population) and increasing the combined minority percentage to over 90 percent of the total. The change will have a retrogressive effect and it was adopted with a racial purpose.

3. House

These Intervenors challenge the House districts noted by the Department of Justice. LULAC also objects to the districts to which MALC objected. Finally, TLBC, NAACP, and LULAC also object to these following additional districts:

Bell County

Existing district 54 in Bell, Burnet and Lampasas Counties changed from a 55.4 percent Anglo majority in 2000 to a 51.5 percent minority majority in 2010. The district split the minority population of the City of Killeen with district 55 (which increased over five percentage points from 2000 to 2010). Rather than unite Killeen into a single district consistent with its guidelines, the state chose to continue the fragmentation with altered lines within Killeen. The state rejected a compact alternative district centered on Killeen with a minority population over 60 percent for a racially discriminatory purpose.

Dallas County

Dallas County had increased from 54.2 percent minority in 2000 to 65.5 percent minority in 2010. The state plan packs the bulk of the minority population into districts ranging up to 91 percent minority, and fragments the remainder among Anglo-controlled districts so that. The plan also creates bizarrely shaped districts, fragments a large number of minority voting precincts, unnecessarily alters existing district boundaries, and breaks up existing get-out-the-vote and other political arrangements. These changes will increase costs to minority candidates and organizations and will have a depressing effect on overall minority participation in elections beyond the districts at issue in this case. The most egregious examples of such districts include proposed districts 103, 104, 105, 110, and 111.

Existing district 101 in eastern Dallas County was one of two districts eliminated in the state plan.

The district was only 2.41 percent below the ideal population. The minority population had increased from 36 percent in 2000 to 59.7 percent minority in 2010, and minority voters came close to electing a candidate of their choice in 2008. The state selected district 101 as one of two Dallas County districts to eliminate. Alternative plans maintained district 101 virtually intact, and eliminated instead two predominantly Anglo districts that were badly under-populated (-24.49% and (-15.97%).

Existing district 106 in western Dallas County was the second of two districts eliminated in the state plan. The district was only 4.73 percent below the ideal population. The minority population had increased from 51.9 percent in 2000 to 70.0 percent in 2010. The state selected district 106 as one of two Dallas County districts to eliminate. Alternative plans maintained district 101 substantially untouched and with a 67.7 percent minority population and eliminated instead two districts predominantly Anglo districts that were badly under-populated. The elimination of this district is retrogressive and infected with a racially discriminatory purpose.

The north-northeastern area of Dallas County (existing districts 102, 107, 112) divides a growing minority concentration. The state's plan further fragments the concentration among proposed Anglo dominated districts 102, 107, 112, 113 and 114. The state rejected alternative plans that avoided this fragmentation and create a district in which minority voters would have an opportunity to elect a representative of their choice from that area.

Fort Bend County

Existing district 26, situated in Fort Bend County to the southwest of Houston, increased from 44 percent minority in 2010 to 60.6 percent minority in 2010; the Asian American population increased from 22.6 percent to 33.6 percent during that period. The proposed plan reduced the minority percentage to 54.7 percent and the Asian percentage to27.5 percent. The state rejected available alternative plan that would avoid that retrogression with a racially discriminatory purpose.

Harris County

Like Dallas County, Harris County increased significantly in minority population. In a change from the formula for district assignments used in 2000, the state removed one district in Harris County. The state selected district 149 (89.3% minority in total population in 2010 with a black plurality) as discussed by the United States. As in Dallas County, the state packed minority districts beyond levels necessary to maintain existing minority districts up to 92.3 percent minority and fragmented the remaining minority areas and submerged them in Anglo-controlled districts. Similarly, the state unnecessarily reconfigured and contorted minority districts with the negative effects on minority districts discussed in Dallas County. See especially districts 139, 145 and 146. The Intervenors challenge this state's action as retrogressive and racially motivated.

Existing district 144 in eastern Harris County increased from 48.5 percent minority n total population in 2000 to 69.3 percent minority in 2010.

The proposed plan lowers the minority percentage by six percentage points and retrogresses minority opportunities. Predominantly minority precincts are adjacent to district 144 whose inclusion in the district would have avoided retrogression.

Tarrant County

Tarrant County increased substantially in minority population between 2000 and 2010, and gained one house seat. Tarrant County has been marked by exceptionally and unnecessarily contorted districts as the state systematically fragmented minority concentrations. See especially congressional districts 6, 12, 26, and 33; senate districts 9, 10, 12 and 22; and house districts 90, 93 and 95. The unnecessary redrawing of minority districts and the layered fragmentation of minority concentrations combine seriously to undermine minority political opportunities and participation by minority citizens in the electoral process, as discussed above in reference to Dallas County.

E. Texas Latino Redistricting Task Force Intervenors

The Latino Task Force Defendant Intervenors join the United States and add as follows: the State House plan, H238, and the congressional plan, C185, intentionally discriminate against Latino voters in violation of Section 5 of the Voting Rights Act of 1965.

Date: September 23, 2011

Respectfully submitted,
On Behalf of the Attorney
General and the United
States of America:
/s/ Daniel J. Freeman

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 1:11-cv-01303

STATE OF TEXAS,

Plaintiff,

v.

UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States,

Defendants.

(RMC-TBG-BAH)
Three-Judge Court

FILED 09/19/11
Document 45

ANSWER

Defendants Eric H. Holder, Jr., Attorney General of the United States, and the United States of America hereby answer each paragraph of the Complaint as follows:

In response to the un-numbered first paragraph in the Complaint, Defendants admit that Plaintiff is seeking a declaratory judgment in this action that four statewide redistricting plans comply with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Defendants admit that Plaintiff is entitled to a declaratory judgment under Section 5 of the Voting Rights Act with respect to the proposed State Board of Education (SBOE) plan and the proposed Senate

plan. Defendants deny that Plaintiff is entitled to a declaratory judgment under Section 5 of the Voting Rights Act with respect to the proposed House plan and the proposed Congressional plan. Defendants lack knowledge or information sufficient to form a belief about what assumptions under which Plaintiff brings its claims, and about what claims that Plaintiff reserves, and therefore deny the same. Defendants aver that Section 5 is constitutional.

1. Defendants admit that Texas is a state and is subject to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Defendants lack knowledge or information sufficient to form a belief about the truth of whether Texas brings this action on behalf of itself and its citizens and therefore deny the same.

2. Defendants admit the allegations in Paragraph 2.

3. In response to the allegations in Paragraph 3, Defendants admit that this action is brought pursuant to Section 5 of the Voting Rights Act, that this Court is authorized to issue a declaration as to whether Plaintiff's redistricting plans comply with Section 5 of the Voting Rights Act, and that this Court has subject matter jurisdiction under 28 U.S.C. § 1331. Defendants deny that Plaintiff is entitled to a determination that the proposed House plan and proposed Congressional plan comply with Section 5 of the Voting Rights Act.

4. Defendants admit the allegation in Paragraph 4.

5. Defendants admit the allegations in Paragraph 5.

6. Defendants admit the allegations in Paragraph 6.

7. Defendants admit the allegations in Paragraph 7 insofar as they merely contend that the Texas Legislature has enacted proposed redistricting plans for the SBOE, Texas House of Representatives, Texas Senate, and Texas Congressional delegation.

8. Defendants admit the allegations in Paragraph 8.

9. Defendants admit the allegations in Paragraph 9 only insofar as Defendants have received information from Plaintiff regarding the four redistricting plans that are the subject of this declaratory judgment action. Plaintiff has not filed a request with the Attorney General seeking administrative preclearance for the four redistricting plans pursuant to Section 5 of the Voting Rights Act. Defendants deny that Plaintiff's "informal" submission is complete, in that it does not contain all information necessary for Defendants to determine whether the redistricting plans at issue in this litigation comply with Section 5 of the Voting Rights Act. Defendants further deny that the "informal" submission tracks and mirrors the DOJ's administrative preclearance process.

10. Defendants admit the allegations in Paragraph 10.

11. Defendants admit the allegations in Paragraph 11.

12. Defendants admit the allegations in Paragraph 12, except to the extent that Plaintiff alleges that the proposed SBOE plan became

effective on August 29, 2011, which allegation is denied. The proposed SBOE plan has no force or effect unless and until this Court determines that the plan meets the requirements of Section 5 of the Voting Rights Act.

13. Defendants admit the allegations in Paragraph 13, to the extent that Plaintiff provided the Attorney General with documents and data on July 19, 2011, and that Plaintiff attached those materials to the Complaint. Defendants deny that these documents and data constitute all materials necessary for the Attorney General to determine whether the proposed SBOE plan complies with Section 5 of the Voting Rights Act.

14. Defendants admit the allegation in Paragraph 14, only to the extent that the informal submission explains Plaintiff's view of the SBOE plan. Defendants deny that Plaintiff's informal submission establishes these facts standing alone. Defendants admit that the SBOE plan complies with Section 5 of the Voting Rights Act.

15. Defendants admit the allegations in Paragraph 15. Defendants deny that Plaintiff's informal submission established these facts standing alone.

16. Defendants admit the allegation in Paragraph 16.

17. Defendants admit the allegation in Paragraph 17.

18. Defendants admit the allegations in Paragraph 18, except to the extent that Plaintiff alleges that H.B. 150 is enforceable, which allegation

is denied. The proposed House plan has no force or effect unless and until this Court determines that the plan meets the requirements of Section 5 of the Voting Rights Act.

19. Defendants deny the allegation in Paragraph 19. The proposed House plan has no force or effect unless and until this Court determines that the plan meets the requirements of Section 5 of the Voting Rights Act.

20. Defendants admit the allegations in Paragraph 20, to the extent that Plaintiff provided the Attorney General with documents and data on July 19, 2011, and that Plaintiff attached those materials to the Complaint. Defendants deny that these documents and data constitute all materials necessary for the Attorney General to determine whether the proposed House plan complies with Section 5 of the Voting Rights Act.

21. Defendants admit the allegation in Paragraph 21, only to the extent that the informal submission explains Plaintiff's view of the proposed House plan. Defendants deny that Plaintiff's informal submission establishes these facts standing alone. Defendants deny that the proposed House plan, as compared with the benchmark, maintains or increases the ability of minority voters to elect their candidate of choice in each district protected by Section 5. Defendants deny that the proposed House plan complies with Section 5 of the Voting Rights Act.

22. Defendants deny the allegations in Paragraph 22.

23. Defendants admit the allegation in Paragraph 23.

24. Defendants admit the allegation in Paragraph 24. 25. Defendants admit the allegations in Paragraph 25, except to the extent that Plaintiff alleges that S.B. 31 is enforceable, which allegation is denied. The proposed Senate plan has no force or effect unless and until this Court determines that the plan meets the requirements of Section 5 of the Voting Rights Act.

26. Defendants deny the allegation in Paragraph 26. The proposed Senate plan has no force or effect unless and until this Court determines that the plan meets the requirements of Section 5 of the Voting Rights Act.

27. Defendants admit the allegations in Paragraph 27, to the extent that Plaintiff provided the Attorney General with documents and data on July 19, 2011, and that Plaintiff attached those materials to the Complaint. Defendants deny that these documents and data constitute all materials necessary for the Attorney General to determine whether the proposed Senate plan complies with Section 5 of the Voting Rights Act.

28. Defendants admit the allegation in Paragraph 28, only to the extent that the informal submission explains Plaintiff's view of the proposed Senate plan. Defendants deny that Plaintiff's informal submission establishes these facts standing alone. Defendants admit that the proposed Senate plan complies with Section 5 of the Voting Rights Act.

29. Defendants admit the allegations in Paragraph 29, except to the extent that Plaintiff alleges a causal or legal connection between maintenance of specific population thresholds and the continued ability of minority voters to elect their candidates of choice or that the nine districts that meet these numerical thresholds are the only districts in which minority voters have the ability to elect their candidate of choice under the benchmark Senate plan or the proposed Senate plan, which allegations are denied.

30. Defendants admit the allegations in Paragraph 30. 31. Defendants admit the allegations in Paragraph 31.

32. Defendants admit the allegation in Paragraph 32.

33. Defendants admit the allegations in Paragraph 33, except to the extent that Plaintiff alleges that S.B. 4 is enforceable, which allegation is denied. The proposed Congressional plan has no force or effect unless and until this Court determines that the plan meets the requirements of Section 5 of the Voting Rights Act.

34. Defendants admit the allegations in Paragraph 34, to the extent that Plaintiff provided the Attorney General with documents and data on July 19, 2011, and that Plaintiff attached those materials to the Complaint. Defendants deny that these documents and data constitute all materials necessary for the Attorney General to determine whether the proposed Congressional plan complies with Section 5 of the Voting Rights Act.

35. Defendants admit the allegation in Paragraph 35, only to the extent that the informal submission explains Plaintiff's view of the proposed Congressional plan. Defendants deny that Plaintiff's informal submission establishes these facts standing alone. Defendants deny that the proposed Congressional plan, as compared with the benchmark, maintains or increases the ability of minority voters to elect their candidate of choice in each district protected by Section 5. Defendants deny that the proposed Congressional plan complies with Section 5 of the Voting Rights Act.

36. Defendants admit the allegations in Paragraph 36, except to the extent that Plaintiff alleges that districts with a certain percentage of Black voting-age population (BVAP) necessarily either provide or do not provide Black voters with the ability to elect their candidate of choice, which allegations are denied.

37. Defendants admit the allegations in Paragraph 37, except to the extent that Plaintiff alleges that districts with a certain percentage of Hispanic voting-age population (HVAP) necessarily either provide or do not provide Hispanic voters with the ability to elect their candidate of choice, which allegations are denied.

38. Defendants' responses to Paragraphs 1-15 above are incorporated by reference in response to Paragraph 38.

39. Defendants admit the allegations in Paragraph 39.

40. In response to the allegations in Paragraph 40, Defendants admit that Plaintiff is entitled to a declaratory judgment that the proposed SBOE plan complies with Section 5 of the Voting Rights Act. Defendants aver that the Court will have to make its own determination as to whether the proposed SBOE plan complies with Section 5 of the Voting Rights Act before the plan may be implemented.

41. Defendants' responses to Paragraphs 1-9 and 16-22 above are incorporated by reference in response to Paragraph 41.

42. Defendants deny the allegation in Paragraph 42.

43. Defendants deny the allegation in Paragraph 43.

44. Defendants' responses to Paragraphs 1-9 and 23-29 above are incorporated by reference in response to Paragraph 44.

45. Defendants admit the allegations in Paragraph 45.

46. In response to the allegations in Paragraph 46, Defendants admit that Plaintiff is entitled to a declaratory judgment that the proposed Senate plan complies with Section 5 of the Voting Rights Act. Defendants aver that the Court will have to make its own determination as to whether the proposed Senate plan complies with Section 5 of the Voting Rights Act before the plan may be implemented.

47. Defendants' responses to Paragraphs 1-9 and 30-37 above are incorporated by reference in response to Paragraph 47.

48. Defendants deny the allegations in Paragraph 48.

49. Defendants deny the allegations in Paragraph 49.

In response to Plaintiff's Demand for Judgment, Defendants answer as follows:

A. Defendants admit that a three-judge court is necessary to hear this action under 42 U.S.C. § 1973c.

B. Defendants admit that Plaintiff is entitled to a declaratory judgment on the proposed SBOE plan and the proposed Senate plan, deny that Plaintiff is entitled to a declaratory judgment on the proposed House plan, and deny that Plaintiff is entitled to a declaratory judgment on the proposed Congressional plan.

C. Defendants admit that Plaintiff is entitled to a declaratory judgment on the proposed SBOE plan and the proposed Senate plan, deny that Plaintiff is entitled to a declaratory judgment on the proposed House plan, and deny that Plaintiff is entitled to a declaratory judgment on the proposed Congressional plan.

D. Defendants deny that Plaintiff is entitled to any other and further relief. Any and all allegations not specifically admitted herein are denied.

Defendants believe that the scope of the issues between the parties can be substantially narrowed. In order to establish the districts that remain at issue in this litigation, Defendants will present proposed stipulations to Plaintiff and to the

Defendant-Intervenors on or before September 20, 2011.

Date: September 19, 2011

Respectfully submitted,

RONALD C. MACHEN, JR.
United States Attorney

EXCERPTS FROM *PEREZ*, No. 11-360, TRIAL TRANSCRIPTS VOLUME 1:

September 6, 2011

* * *

[J. Morgan Kousser]

* * *

* * * "Colorblind Injustice" is to look at a series of factors which historians and courts have used to try to determine the intent of framers of particular laws. And in redistricting cases in particular one of the things that they have looked at is the shape of the districts, most famously in Shaw versus Reno, but in lots of other cases they have looked at the shape of the districts to try to determine intent. And it's commonsensical. That's what a lot of people have -- historians have done before even judges started doing it.

Q. And as an example of that --

MR. GARZA: If we could turn now to page 95 of the report and look at figure eight that's on page 19.96, Robert. The one before that, 19.96.

A. Okay. This is district 41 in the state house that I said we would get back to. I think it was described on the floor of the House as a transformer district. Somebody has kids. It's a district that immediately attracts your eye and you say to yourself what does this mean, why did they do it this way.

MR. GARZA: And if we could turn to the next page, Robert.

Q. (BY MR. GARZA) I'm not sure we'll be able to see it clearly, but what do you -- what are you showing then with --

A. Well, this does a couple of things. One, it superimposes -- I guess it's Anglo population on the district so that the -- the areas which have a large proportion of Anglos are

* * *

the darker areas here. It also shows the precincts and probably you would have to look at this really blown up, but if you look at voter -- if you look at the way that the lines are drawn they cut voter districts quite considerably. I think there are 14 VDT cuts in this particular district alone which is more than the total number of cuts in the whole state for the state senate which is 10 or 12.

Q. So just within one district they've managed to cut more voting precincts than in the entire senate plan?

A. That's correct.

Q. And what is that an indicator of, Dr. Kousser?

A. Well, obviously something is going on. And if you look at the pattern of population you see what is going on.

Q. So if we turn to the next page, page 19.98.

A. This is even harder for those people in the audience to see but here we go. The dots are I think 20 people of Anglo orientation, Anglo demography and for each dot. So if you look at the district it captures just about all of the heavily Anglo areas that it possibly could. This is in a county that is quite heavily Latino. That's good. You can see that

the shapes are tracking -- trying to capture as many Anglos as they possibly can. And it's apparent simply by looking at the -- at the patterns of demography versus the patterns of the lines on the map that something was going on and this tells you what was going on. They're trying to increase the Anglo percentage in this * * *

EXCERPTS FROM *PEREZ*, No. 11-360, TRIAL TRANSCRIPTS VOLUME 2:
September 7, 2011

* * *

[Henry Flores]

* * *

Spanish surname turnout rate in these precincts that were moved into congressional 23?

A. Well, they were all 19 percent or lower.

Q. And turn to tab 396, please. Dr. Flores, what did you observe with respect to the Spanish surnamed turnout rate for the areas Frio, La Salle and Atascosa counties that were moved into Congressional 23?

A. The turnout rates -- well, it seemed like the high was at about 35 percent plus. It looked like nobody voted in that one precinct but I --

Q. In general, Dr. Flores, what did you observe with respect

12 to --

A. Higher turnout rates.

Q. This is higher than the El Paso area, but still in general what would you say the average is of this area drawn into 23?

A. I could only -- I couldn't guess. I mean, it would have to be the high 20 percents maybe.

Q. Okay. With respect to tab 397 now, this is an area take out of Congressional District 23. Do you

recognize this area just physically on the map? What is this area?

A. This is the south side of Bexar County.

Q. What do you observe with respect to the Spanish surname turnout rate of this area which was removed from 23?

A. It's somewhere between -- just eyeballing it, somewhere between 25 percent, maybe 30 percent, someplace in there.

* * *

Q. And with respect to tab 398 now?

A. Northwest side of Bexar County.

Q. What did you observe with respect to the Spanish surnamed turnout in this area of northwest Bexar County that was removed from Congressional District 23?

A. Very consistently over 30 percent.

Q. If you will turn now to tab 200. This is another summary chart of the changes to Congressional District 23.

JUDGE GARCIA: What -- oh, 200?

MS. PERALES: Tab 200.

THE WITNESS: I've got it.

Q. (BY MS. PERALES) Dr. Flores, looking at the information about the Congressional District 23 --

MS. PERALES: Oh, this is in Volume 8, Your Honor.

JUDGE GARCIA: I'm sorry?

MS. PERALES: We're still in Volume 8.

JUDGE GARCIA: Right, volume 8, 200?

MS. PERALES: Yes. Tab 200. I'm sorry. Page 5.

Q. (BY MS. PERALES) You must flip forward because it begins with Congressional District 15. So it's as you move forward through the reports about five pages in behind tab 200 you will see a summary chart for Congressional District 23.

A. Okay. I was on the wrong page too. Okay.

Q. Looking at this summary data is it fair to say that the HCVAP and the Spanish surname voter registration went up in

* * *

Q. If you wouldn't mind observing what has happened to Congressional District 27 in the state's adopted plan C185? What happens to Congressional District 27?

A. It gets completely reconfigured. It used to be anchored in the north by Nueces County and run down to the tip of Texas down to Cameron County. And now in the new configuration Nueces anchors it. Nueces is the southernmost county in District 27, runs up along the Coastal Bend and then north to Bastrop County all the way to Travis practically.

* * *

Q. Traditionally where was Nueces County located in the congressional configuration?

* * *

A. Traditionally Nueces in Congressional 27 was a majority Hispanic district. It was a Latino opportunity district. Now --Nueces was a significant

part of that Latino opportunity district. Now the way the new configuration is structured Nueces is -- the Hispanics in that particular District 27 are minority, numerical minority. And so Nueces finds itself part of anumerical minority in a new Congressional District.

* * *

A. Alamo Heights, certainly, because they had more expensive homes, more expensive businesses. Edgewood didn't have a lot of businesses and their homes averaged out at about $20,000 at that time. You could buy a house in Edgewood for 20,000. You couldn't buy a house in Alamo Heights for $20,000. It would be 120,000.

Q. And just for the record, you said you lived on the west side?

A. It is part of the -- when they had urban renewal in San Antonio downtown, a lot of the people were pushed towards the west, and it created -- it created what used to be – Edgewood wasn't a Mexicano district. It was more for the farmers who lived out there, but because of the urban -- used to call it urban removal. A lot of the poor people that lived close to downtown were removed, and they ended up out in Edgewood, and they built low-income housing, and that became Edgewood.

Q. How well do you know the southeast Austin area?

A. Well, I lived in Austin for eight years that I served in the legislature, and I have known a lot of people. That doesn't mean out of Austin. There are a lot of comparable things that I would notice going to Austin and living there and eating there and staying

and going to different functions in east Austin with some of my friends, elected officials from the Austin area. There are a lot of similarities.

Q. Were there similarities in the quality of housing?

A. Perhaps not as bad, because I was able to see in San Antonio and to live in the type of housing in San Antonio during my lifetime. But, yes, you know, just looking at it, from an outsider's viewpoint, from traveling around east

Austin, the similarities, no yards in the front, big fences, enclosures, and plants in the front, no yard, no green grass that you could mow. Yes, those similarities, they were obvious.

Q. And what about in terms of people's economic situation? Would you see similarities between southeast Austin and the south side, west side of San Antonio in their economic situation?

A. Well, just knowing and talking to people in Austin, I would say that they have the same problems we had. Whatever jobs they could get were the jobs that paid less, because they were not as educated, just like we were in San Antonio. We didn't have the educational level that other communities had, where they could get a better job because they were better educated, whatever.

Q. Now, I don't know if you can see the map very well there. That is a portion of a congressional proposed district, with a district that runs from the south side, west side of San Antonio to southeast Austin. Would you say that those two areas have enough in common to be combined in a congressional district?

A. Well, what I know about Austin is what I know about west side San Antonio, south side San Antonio. There is a lot of commonality of interests, yes. Yes, very definitely.

Q. And in terms of Alamo Heights, which we discussed a moment ago -- can you put C-185 up for me, please, in the same area? With respect to Alamo Heights, which is in the State's adopted congressional plan, connected in congressional District 21 to the Barton Springs area of Austin, on the west side of I-35, would you say that people on the south side and west side of San Antonio have more in common with people in Southeast Austin than they do with people in Alamo Heights?

A. Sure. In fact, one of the things that got me out of office was the fact that they wanted to stick Alamo Heights in my district, and in that same area that I recognize very well, it doesn't fit the west side or the east side, as far as commonality of interests with what I see in Austin, on the east side of Austin.

MS. PERALES: Thank you. I pass the witness.

MR. MATTAX: No questions.

JUDGE GARCIA: Okay. Thank you, Senator. You are excused.

THE WITNESS: Thank you, sir. Thank you, Judge.

JUDGE GARCIA: Your next witness.

MS. PERALES: The Latino Task Force plaintiffs call Dr. Andres Tijerina.

EXCERPTS FROM *PEREZ*, No. 11-360, TRIAL TRANSCRIPTS VOLUME 4:
September 9, 2011

* * *

that -- that was in response to the comment that we had split that Hispanic population.

Now, it got a little more complicated, because this area in here is the Trinity River Project in downtown Fort Worth. There aren't many people that live in there, but there is a river that winds its way through, and Congresswoman Granger felt it was very important to keep that project, as much of it as possible, within her district, so we tried to draw the line in a way that left as much of the Trinity River Project in her neighborhood.

This area has very few people in it, but it does create a very strange shape. This area down here is somewhat similar to the State House district, District 90 in Tarrant County. And then there were further changes. That is everything on this map.

BY MR. MATTAX:

Q. Why don't you expand that, and let's focus on District 35. Now, you testified earlier that in looking at the growth, where the growth was in the state, that there was sufficient growth in central Texas that a new district would have to be drawn; is that correct?

A. Yes.

Q. And is this an attempt to create a new district in central Texas?

A. Yes, it is.

* * *

the west side of I-35; is that right?

A. Neighborhoods west of I-35, yes.

Q. Exhibit 305, please, sir. Now, just looking back historically at the map used for the 1996 special and general elections and the 1998, 2000 elections, San Antonio and Williamson County are connected in Congressional District 21; is that right?

A. Is 21 -- 21 is in red? So it goes from there up and around?

Q. Yes.

A. Yes.

Q. And then in the court-ordered map that was used for the 2002 elections -- that is Exhibit 306, Sarah -- San Antonio and Austin are also united in Congressional District 21, aren't they?

A. Yes.

MS. PERALES: And then the new exhibit, Sarah.

BY MS. PERALES:

Q. In the legislatively drawn map that was used for the 2004 elections and the 2006 primaries, San Antonio and Austin are also united in Congressional District; isn't that right?

A. Yes.

MS. PERALES: And since we have these up, if you could go to 304, Sarah.

* * *

other goal?

A. The other goal was to create a new district anchored in Cameron County. The old District 27 kind of had twin anchors, Cameron and Nueces, but both the current congressman and I believe the one before that, who had been there a long time, were from Nueces County. So it was my understanding that the representatives and senators in Texas from Cameron County wanted a district that was anchored in Cameron where Cameron would elect their candidate of choice.

So our dual goals with 27 and 34 were to create that district, anchor it in Cameron--that was controlled by Cameron, not Nueces--and also to create a district for Congressman Farenthold who lived in Nueces where he would be elected as a Republican.

Q. And those senators and representatives who wanted to create a district anchored in Cameron County, were they Democrat?

A. Yeah. Senator Lucio -- Representative Lucio and Representative Oliveira, and they're all Democrats.

MR. MATTAX: Thank you. No further questions.

MS. PERALES: One question, please. David, are you connected to the projector? Can you show C 190, please? Maybe I have it on the demonstrative. Let's go low tech, Mr. Downton.

EXAMINATION

BY MS. PERALES:

Q. Is it possible and is it demonstrated in C 190 to have a * * *

* * *

[Ryan Downton]

* * *

Q. And, in fact, you testified you would typically keep a running table of the McCain-Obama results while you were mapping, and you were watching the changes in the district; that's right?

A. For congressional districts, yes.

* * *

Q. And you agree that the old and the new Congressional District 27 have an overlap of Nueces County and part of San Patricio County, but other than that, the geography is totally different, yes?

A. Yes.

* * *

Q. And you consider Congressional District 34 a swap for Congressional District 27; isn't that correct?

A. With respect to the Voting Rights Act.

Q. And you mean specifically that under Section 5, the nonretrogression rule, CD-34 is a replacement for CD-27, yes?

A. Yes.

* * *

Q. And as we went over it in your second deposition, you agreed that Nueces County's registered voters in the benchmark Congressional District 27 make up just over 50 percent of the

* * *

total registered voters in that district, correct?

A. Yes.

* * *

EXCERPTS FROM *PEREZ*, No. 11-360, TRIAL TRANSCRIPTS VOLUME 6:

September 12, 2011

* * *

Q. * * * each member the opportunity to be reelected. How was that accomplished with respect to District 41 and Representative Pena?

A. In District 41 we tried to increase the Republican performance of District 41 to give Representative Pena the best chance to be reelected.

Q. And how does one increase the Republican performance of the district?

A. We searched for precincts that had a higher Republican performance than what he had previously.

Q. So it would be fair to say that District 41, based upon election data, was drawn in an effort ~o give Representative Pena the opportunity to be reelected?

A. Yes, sir, that's correct.

Q. Now, if you zoom out a little bit from those two counties there's been some discussion that there would be excess population in Cameron and Hidalgo County that could have been placed together into an additional district within Hidalgo/Cameron County. In your view would that have been constitutional in the Texas Constitution?

A. That alone, yes. I think that you can take the two surpluses and combine them together. And it's something that I spent a great deal of time attempting to do. We tried to take the surplus of Cameron and the surplus of Hidalgo and put them

together, but the problem that we faced is that when you went further up north on the map you were forced to split a county.

At no point did anybody bring me any proposal even though, you know, we requested it from MALDEF, we requested it from MALC. We visited with different organizations and asked them to show us how to do that without causing a county split and no one was able to give us a proposal that did that. Inevitably when you take the population of Cameron and Hidalgo out of the rest of the districts going north you're forced to have a county cut almost always around Nueces County.

Q. And in your view would that be an unnecessary cut in violation of the Texas constitution?

A. Yes, sir.

Q. Let's move up slightly north to Nueces County. How is Nueces County, the districts there, drawn?

A. Nueces County was given to us by the Nueces County delegation.

Q. And how many districts was Nueces County entitled to?

A. It was entitled to two. Similar to Harris County, we took the population of Nueces County, divided the ideal district size into it and we got 2.02, which to me means they get two districts. And that .02 can easily be redistributed amongst those two districts.

Q. So would that be -- we've heard testimony or characterization of the drop-in districts. Would that be one of the drop-in districts where the members of

the House created it and it was just dropped into a map?

* * *

or not, correct?

A. That's correct.

Q. And when you say "perform" you meant to perform as a Latino opportunity district, correct?

A. That's correct. That's fair.

Q. Thank you. You may return to your seat. My remaining questions don't involve your having to get up.

MS. PERALES: Can you turn off the ELMO?

Q. (BY MS. PERALES) Now, with respect to Congressional District 27 you agree with me that the changes from the benchmark plan, C 100, to the adopted plan, C 185, include placing Nueces County in a district that stretches farther to the north, yes?

A. Yes, ma'am.

Q. And you agree that Nueces County is no longer joined with the southern Gulf Coast counties such as Cameron, Willacy and Kenedy, yes?

A. Yes, ma'am.

Q. And you agree with me that Nueces County is not sufficiently numerous to comprise a congressional district by itself, correct?

A. That's correct.

Q. And you didn't analyze whether severing Nueces County from the southern counties that it was connected to and joining it with these new northern

counties reduced Nueces County's proportion of registered voters in the new CD 27, did you?

A. I did not. Nueces County was put in that district based on specific testimony that was given at the Nueces County redistricting hearing where they requested to be in a district going north.

Q. Or did they request to be in the base of the district?

A. To be the anchor of a district, but I think -- if I recall correctly, I think they did request being separated from the southern portions.

Q. For at least Cameron County?

A. That I don't recall.

Q. Well, now, with respect to being the base of a district, here's where my question is going. You did not know what proportion of Nueces County's voters there were in the old 27 versus the new 27, correct?

A. No, ma'am.

Q. And you did no election analysis to see whether Nueces County could control the election in the new CD 27 or in the benchmark?

A. No, ma'am.

Q. Now, improving the electoral chances of Mr. Farenthold was a consideration in the changes to Congressional District 27, wasn't it?

A. Yes, ma'am.

Q. And it was your opinion that Blake Farenthold would have had a difficult time being reelected in the benchmark Congressional District 27, correct?

* * *

[Gerardo Interiano]

* * *

Q. Now, it's your understanding that there were two concurrent goals for Congressional District 23, Big West Texas 23: Make sure the Hispanic percentages were above the benchmark in the new

* * *

plan and give Representative Conseco a chance to be reelected; isn't that correct?

A. That's correct.

* * *

Q. And when you looked at these reaggregated elections it showed that Congressional District 23 elected the Latino preferred candidate in one out of 10 racially contested elections, correct?

A. Correct, compared to three out of 10 in the benchmark.

* * *

Q. Now, improving the electoral chances of Mr. Farenthold was a consideration in the changes to Congressional District 27, wasn't it?

A. Yes, ma'am.

Q. And it was your opinion that Blake Farenthold would have had a difficult time being reelected in the benchmark Congressional District 27, correct?

* * *

A. Yes, ma'am.

Q. And you know that Nueces County contains a majority of Hispanic citizen voting age population, correct?

A. Yes, ma'am.

Q. We talked a moment ago about a district electing three out of 10 Latino preferred candidates. You testified in your deposition, didn't you, that in your opinion if a district elects even three out of 10 Latino preferred candidates you would not consider it a Latino opportunity district, would you?

A. Not necessarily. No, ma'am.

Q. And you agreed with me in your deposition, simple math, that if a redistricting plan adds a Latino opportunity district but also takes away a Latino opportunity district that there is no net gain in the number of opportunity districts?

A. That's correct.

* * *

Q. District 36 in Hidalgo County is over 4,000 overpopulated. District 39 in Hidalgo County is over 7,700 overpopulated. District 40 in Hidalgo County is over 5,800 overpopulated. And the district that you drew for Mr. Pena, District 41, is 7,399 underpopulated. Was that intentional?

A. Yes, sir.

EXCERPTS FROM *PEREZ*, No. 11-360, TRIAL TRANSCRIPTS VOLUME 7:

September 13, 2011

* * *

[Chairman Burt Solomons]

* * *

Q. Now, it is your position, isn't it, that you need a federal judge to tell you that the federal Voting Rights Act trumps the Texas Constitution's county line rule; isn't that correct?

A. More specifically, U.S. Supreme Court, because the county line rule is not only here in Texas, but it is elsewhere.

* * *

Q. So, Chairman, you are aware that District 144 is underpopulated by over 5,700 people?

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A. Not unless you tell me that.

Q. You wouldn't disagree with me that it was?

A. I would not disagree with you, if you told me.

Q. And it is adjacent to District 145; is that correct?

A. Sure.

Q. And 147 is adjacent to District 145; isn't that correct?

A. 147, isn't it up some?

Q. Right there with --

A. It is right there? Okay. Sure.

Q. So --

A. They are joined.

Q. They are joined together?

A. They are joined.

Q. And District -- and you don't disagree with me that District 144 is, like I say, about 5,700 people underpopulated, that District 145 is about 3,000 people overpopulated, and District 147 is about 8,200 people overpopulated?

A. If you tell me that, that's fine.

Q. And District 144 is Representative Legler's district; is that correct?

A. I don't know his district by number, but, yes, I know him.

Q. Okay. And you wouldn't disagree with me that that district was reduced in minority population and it does not provide a minority opportunity district?

Page 1598

A. I don't remember independently, but if you -- I am not going to disagree with you.

Q. And both District 145 and 147 are, in fact, minority opportunity districts; is that correct?

A. I don't know that.

Q. So District 147 is a 73-percent minority district?

A. It would seem to me to be a minority district, then.

Q. And District 145 is a 79 or 80-percent minority district?

A. If you tell me that, sure.

Q. You don't have any reason to disagree?

A. I don't have -- right now, no. I have no reason to disagree with you.

Q. And you have no way to explain to the Court why the population deviations between those districts overpopulate the minority districts and underpopulate the Anglo --

A. Independently not. I relied on staff. I would assume that staff would have better knowledge. Gerardo and Ryan would have a better understanding of that than I would.

* * *

EXCERPTS FROM *PEREZ*, No. 11-360, TRIAL TRANSCRIPTS VOLUME 8:

September 14, 2011

[Dr. John Alford]

* * *

JUDGE SMITH: I know. You have a lot to do.

MR. MATTAX: He has another trial, too, in another court.

MR. GARZA: And I believe that ends the housekeeping for the plaintiffs.

JUDGE GARCIA: All right. If the State will call its next witness.

MR. SCHENCK: Your Honor, we call Dr. John Alford.

THE CLERK: Please raise your right hand, sir.

(The oath was administered)

DR. JOHN ALFORD, DEFENDANT'S WITNESS, SWORN DIRECT EXAMINATION

BY MR. SCHENCK:

Q. Good morning, Dr. Alford.

A. Good morning.

Q. How are you?

A. I'm good. I'm just trying to get my desk cleaned up here.

Q. Okay. Let me give you a second, and I'll grab my water. Could you state your name for the record, please?

A. John Alford.

Q. Okay. Dr. Alford, where do you work?

A. At Rice University in Houston, Texas.

Q. Okay. What do you do at Rice?

A. I teach political science.

Q. And do you have a Ph.D.?

* * *

JUDGE GARCIA: And to refresh my memory –

JUDGE SMITH: I'm sorry. In being a majority – what did you say?

THE WITNESS: Anglo district.

JUDGE SMITH: Anglo district?

THE WITNESS: Right. Sorry.

THE REPORTER: I didn't hear him either.

JUDGE GARCIA: Where is CD-34?

MR. SCHENK: 34, Your Honor?

JUDGE GARCIA: Right. What counties?

MR. SCHENK: It is where former CD-27 largely –

JUDGE GARCIA: That goes from Corpus Christi down to the Valley; is that right?

MR. SCHENCK: Former 27 went from Corpus Christi down to the Valley.

JUDGE GARCIA: And where is 34?

MR. SCHENCK: 34 starts in the Valley and goes north.

JUDGE GARCIA: Okay.

JUDGE SMITH: Up through Kingsville and Kennedy County.

MR. SCHENCK: Correct.

BY MR. SCHENCK:

Q. And I believe we have the data, ethnic data for CD-34. It is currently 79-percent Hispanic voting age population and 71.7-percent Hispanic citizen voting age population.

Dr. Alford, would you expect that to be a strong performing district for Latino opportunity?

A. Yes. It is clearly a strong district that reconstituted election analysis suggests it will be a secure district for Hispanic candidates of choice.

JUDGE GARCIA: Now, of the four new districts, how many would you say are minority opportunity districts?

THE WITNESS: I don't think it is -- .(Witness mumbling) -- one of the issues of which districts are the new districts. The state has gained four districts. Some of the new districts are clearly drawn in such a way that they are sufficiently different, that they would be counted as new districts.

JUDGE GARCIA: But one of them was a tradeoff that was already a Hispanic opportunity district, 27 to 34; is that right? They just flipped'?

THE WITNESS: Right. So if we want to think about what is the comparison to what the Court was unhappy with the last time around --

JUDGE GARCIA: Right.

THE WITNESS: -- I mean, 23 was flipped. 23 was flipped to a majority district. It was replaced with a district not in the same area and which had other kinds of issues.

JUDGE GARCIA: Right.

THE WITNESS: This time, it's – the actual appropriate comparison, this time, is 27. It is 27 that has been flipped into a majority Anglo district, and the district constructed in the same geog – basic geography that is the replacement district.

So although that is a new district, in the sense of its number, it is one of the ones above 32, it is simply a reconfigured District 27.

JUDGE GARCIA: Right. So before, how many are minority opportunity districts?

THE WITNESS: I think I would count 35 as the district that is the additional – the additional district.

JUDGE GARCIA: And is that the only one, then, of the four, other than counting the flip districts?

THE WITNESS: Right. Which I wouldn't count.

JUDGE GARIA.: Right. So you are telling me of the four, only one is a minority opportunity district, and that is District 35?

THE WITNESS: Yes. And I think -- I mean, even there, it is probably better than thinking of -- 1 guess we are talking about basically the same thing. Is there an

* * *

MR. SCHENCK: Well, unless it wasn't beforehand.

THE WITNESS: It is important –

JUDGE GARCIA: 27 was beforehand, right, the Corpus Christi area?

MR. SCHENCK: (Shakes head.)

JUDGE GARCIA: No?

MR. SCHENCK: They just elected Blake Farenthold.

JUDGE GARCIA: I understand that.

JUDGE RODRIGUEZ: Let's get the witness to testify. And I think the question is, you said the current plan, plan 100, has ten out of the 32 districts being opportunity districts, correct?

THE WITNESS: And I think, again, by "opportunity" meaning where there is a population, majority population, that is really – that is just simply a matter of looking at population numbers.

I think it was – ten districts that are likely to elect minority candidates of choice.

JUDGE RODRIGUEZ: So using that same definition, out of the new plan, how many opportunity districts are created, in your opinion?

THE WITNESS: I'm sorry. You are talking about the new plan?

JUDGE RODRIGUEZ: I think what Judge Garcia and what I am interested in is comparing the base plan to the newly adopted plan. And so you have given us the numbers on the base plan.

What are your numbers on the adopted plan?

THE WITNESS: Right. So if we think about the base plan, there were seven districts that would – population numbers would be counted as Hispanic majority districts. Of the seven, two had failed to elect candidates of choice in 2010.

So you can think of that as there were seven districts, or you can think of that that there were five districts that were actually electing candidates of choice. There is no variation in the black districts. That is – (Witness mumbling.)

JUDGE GARCIA: And under the new plan, how many minority-majority districts or those districts that potentially could elect a minority?

THE WITNESS: Under the –

JUDGE GARCIA: Under 185.

THE WITNESS: Under 185, you basically are restored to the seven districts that will elect candidates of choice, so you restore it to the seven districts you had before, 27 and 23 flipped in 2010.

JUDGE GARCIA: Okay. So, essentially, there is no gain?

THE WITNESS: In terms of -- this is sort of in terms of whole district and in terms of districts likely to elect candidates of choice, I think that there is a gain in the sense that you were electing five candidates of choice in 2010 and will likely elect 2000 – likely elect seven candidates of choice under the new plan, so in that sense, there is a gain.

I think it is important to think about where you start. In terms of just the nature of the districts themselves, I don't think that is as clear. That's why

I start my analysis by thinking about, you know, what was the actual situation in the seven districts that the legislature was faced with.

It was – it had seven minority districts, five of which performed in the most recent election.

JUDGE RODRIGUEZ: Now, you call that a gain. Could you characterize it as, well, plan 100 was deficiently created in the first instance?

THE WITNESS: I think when – one of the issues in both the 27th and the 23rd is that we do definitely see a trend across time in the district, so the districts trended Republican, rather than starting out Republican.

The 23rd maybe started out a little more Republican than 27. So I would – I am not sure I would be critical of the Court's drawing of the 23rd in that sense, but they were – but they were districts that were, in their current location, with their current population, without any changes in lines, were trending in the direction that would make them less likely to perform.

In fact, in 2010, they did not perform. So I think that's – whether those districts were problematic in their creation or simply became problematic as a result of population shifts, I just think it is important to recognize that it is easy to say there were seven districts, but in those seven districts, there were only five Hispanic candidates of choice that were elected in 2010.

JUDGE SMITH: So one way you are looking at it is that slightly better means that there would be seven instead of five? Is that – I don't mean to

oversimplify it, but I need to be given an explanation. Is that right or –

THE WITNESS: Right. So there would be seven instead of five, but there also would be the 23rd, and I think that is important. There are ways you can overcompare what happened before to what happened now.

Remember, before the 23rd got flipped into a majority Anglo district – (Witness mumbling) – in the – in the – coming into the court case, where the Court undid that flip that was designed to protect Bonilla.

This time, it was the 27th that got flipped and, basically, in that flip, the 27th basically became the 34th. They sit right next – (Witness mumbling) – and share the

JUDGE GARCIA: So –

THE WITNESS: So what did happen in the 23rd? 23rd has a replacement, right? So people count, well, the 35th, and that makes up for the 23rd. But the 23rd is still a majority Hispanic district. It is majority Hispanic in registration, right? So that is where there is a half district.

JUDGE GARCIA: Do you think the 23rd is properly drawn under plan 185?

THE WITNESS: I am not sure – if – if – I have to say, if I was advising the legislature on drawing the 23rd, I would not have done what was done to the 23rd. I think what happened to the 23rd is, there is fairly little change in the 23rd.

It remains, again, in a technical definition, it is a majority Hispanic district. Therefore, could it elect a Hispanic candidate of choice? It could. But quite frankly, I don't feel much better about – or any better about the 23rd as currently drawn, compared to the 23rd that the Court drew in which, in fact, led to the 2010. I think –

THE REPORTER: Sir –

THE WITNESS: I'm sorry.

THE REPORTER: You are fading out on me. We are here to make a record. Let's do it.

JUDGE GARCIA: Al right, go ahead.

THE WITNESS: So I don't think that the 23rd is any more likely to perform than it was. I think it is probably less likely to perform than it was, and so I certainly wouldn't count and don't – in all of this discussion, I haven't counted the 23rd as an effective minority district in the newly adopted plan, but it does remain a majority district.

And if the trends that push the 23rd in a Republican direction were reversed, continued population growth of Hispanics in that area, perhaps – or an increase in either turnout or cohesion among Hispanic voters, the district has the potential to elect a candidate of choice, but –

JUDGE GARCIA: But it is less now than under the current –

THE WITNESS: It has – it has slightly better numbers, so if we were looking only at CVAP or SSRV it would look like slightly better numbers. It has slightly worse reconstituted election analysis.

And so to be consistent, and I think it is important to be consistent, it is important to admit that the existing 23rd, based on reconstituted election analysis, independent of the fact that it was a majority Hispanic district, was trending in a direction that would make it not perform.

It is also important to admit that having added Hispanic population to the new 23rd, that has taken – that added population has also made the reconstituted election analysis marginally worse, and so the 23rd is less likely than it was previously, but it still remains a majority Hispanic district, and it has been offset in the creation of the 35th by a district that does have very good reconstituted election numbers.

JUDGE GARCIA: Well, notwithstanding that, you have previously testified a few minutes ago that had you been advising the legislature, you would not have drawn it in the manner that it is drawn under 185?

A. I would definitely – I mean, my first advice to the legislature would be just – you know, in simple – with a slight memory of history, do as little as possible to the 23rd as you can.

It really has been a difficult -- it was a difficult district for the Court to draw. It was a difficult district for the legislature to draw. But, basically, enough is enough, right? Don't make this hard on yourself.

JUDGE GARCIA: Don't mess with the 23rd.

THE WITNESS: Don't mess with the 23rd. That would be my first rule for drawing the districts.

JUDGE GARCIA: Okay.

THE WITNESS: If -- obviously, some change had to take place in the 23rd. If you were going to change something in the 23rd, then I would have advised either making – either -- rather than creating a replacement district for the 23rd, I would have advised making the 23rd itself a better performing district in terms of election numbers, or – basically that, or leaving the 23rd alone.

I don't think that what they did, which was really not change the 23rd around, but just fiddle around with the 23rd enough to cause all of us to be here talking about the 23rd that is not something I would advise.

I am not the legislature. I don't know what kinds of pressures are involved. I do know in working with drawing district plans that there are a lot of things that go into redistricting. So as an advisor or as a consultant, I am free to say, I would not do that. But --

JUDGE GARCIA: Now, one final question. Are you surprised that given the minority growth in Texas, which counts for 66 percent of the growth, that Texas – that the legislature did not draw more than one minority opportunity district?

THE WITNESS: I think it is very hard to look at those numbers, and we hear a lot of that number, almost always based on population growth, to hear that number and not believe that automatically that would turn into new districts.

JUDGE GARCIA: No., not automatically, but what is your opinion on it?

THE WITNESS: Okay. Well, first -- I mean, my first thought about that is that automatically, at the very least., it ought to automatically improve the chances of Hispanics electing candidates in the districts that are already drawn as Hispanic districts, because the population was going up.

So sometimes people think of the population as having suddenly appeared in the census and now we get to redistribute it. It is already in the districts. So if we look at C-100, if we look at the 32 districts, all of those districts experience that growth that we have all talked about in the state.

All of those districts experienced Hispanic and black growth and did not experience much Anglo growth. So the first thing that would surprise me, and didn't surprise me, is that with all of that growth across that decade, we go from seven Hispanic districts electing candidates of choice in 2010 to five Hispanic districts electing candidates of choice.

JUDGE GARCIA: Okay.

THE -WITNESS: That seems to me to be at odds with this -- with that general pattern. I think what that tells us about the general trend is two things. One, that we have to be careful to look -- to focus as much as we can, when we are thinking about both drawing districts and the performance of the districts, the state as a whole, on actual voters, on the composition of voters, because it is voters that make districts work, and so total population numbers may not be as useful as either CVAP numbers – and I am no great fan of that or of SSVR numbers.

So that's the first thing. It is not as big a change in SSVR, by any means, as it is – would be suggested by population.

JUDGE GARCIA: Okay. Thank you, sir.

JUDGE RODRIGUEZ: Let me ask you a follow-up on that. We keep on hearing about, from 2000 to 2010, Hispanic population went up by 66 percent, but I am not sure I have heard anywhere or read anywhere here what we estimate the HCVAP increase of that was.

Do you have any idea what that is?

THE' WITNESS: My recollection is that the HCVAP number in 2000 would have been somewhere around 20. And I am thinking that the currency of that number is somewhere around 24, something like that.

So I mean, it is important. First of all, you see right away that the State is not, in fact, half Hispanic, in terms of citizen population. You are at a number there that, in both cases, roughly comports with the number of Hispanic districts that have been drawn.

And second, that that's -- that the growth, while it is still dramatic, is not as dramatic in those terms. And I think SSRV, I think you see something that roughly follows that in terms of SSRV.

In fact, I may be confusing SSRV and CVAP, which, by the way, wouldn't matter much in 2000. In 2000, SSRV and CVAP for Hispanics track each other quite closely. There is very little difference.

SSRV, in the current estimates, in the survey version, don't track quite as closely, but – so if we just thought about this in terms of the change in registered vote, the change in registered vote shows an increase in the proportion Hispanic, but it is not anything like the – what we would expect from the total population.

JUDGE RODRIGUEZ: Thank you.

BY MR. SCHENCK:

Q. Dr. Alford, I think we have covered CD-23 sufficiently. The legislature, in your understanding, was faced with something of a dilemma.

We had a district drawn by the courts with a majority Hispanic population as a remedy after LULAC versus Perry; is that correct?

A. That is correct.

Q. Okay. And from the reconstituted election analysis you have looked at, the district was, nonetheless, trending substantially Republican.

A. That is correct.

Q. Okay. And from reconstituted election analysis you have looked at, the district was, nonetheless, trending substantially Republican?

A. That is correct.

Q. And eventually elected a Republican to Congress in 2010?

A. Right. The incumbent – the incumbent in the district then – when you are thinking about what the legislature has to deal with, the incumbent is a Republican, and that presents two challenges.

It presents a challenge for the district as a minority opportunity district, because incumbents in the House are hard to unseat, and so now you have a district that was already trending Republican and now it is trending Republican and has a Republican incumbent. That makes it less likely to perform.

Second, you have a Republican incumbent in the district, and incumbency protection is a big part of what is involved in redistributing, particularly for the minority party, where protecting your incumbents is something that you might care to do something about.

And then I think, third, the particular Republican happens to be Hispanic and, therefore, that makes it a complicated district to deal with, even if it wasn't the 23rd, which is already, as we know, historically a complicated district.

Q. And to be clear, the legislature did increase the citizen voting -- Hispanic citizen voting age population in the district?

A. I guess one way of thinking about that is that – maybe it is the most charitable. I don't know. One way of thinking of * * *

* * *

Q. How far did you go in your reconstitution election analysis?

A. Well, you can certainly reconstitute elections in the district once the district is drawn as it exists, but, of course, because they are reconstituted, you also can move back and look at the district in elections in which the district didn't even exist by just using the precincts that are drawn into the

district. So you can go back to 2004, and 2004, had that district existed in 2004, it would have voted a majority for George Bush, for example, in the presidential election.

Q. Did you also do reconstituted election analysis for CD-34? Former -- well, I'm sorry. Former CD-27?

A. Yes. So CD-27 also in 2010 elected a Republican Farenthold. So, again, it is a district that is a majority Hispanic district and had been electing a Hispanic candidate of choice, in fact, the same Hispanic candidate of choice in the entire history of the district going back to '83, sometime in the eighties, when the district was created. 2010, that candidate of choice was defeated and Republicans elected -- 27, the reconstituted numbers of 27 are substantially more Democratic than the same numbers for 23. So if you had to compare 23 and 27, in terms of reconstituted elections, 27 is a closer district than 23 in terms of its tendencies. 23 is a more Republican-leaning district that 27 was.

Q. Have you looked at the new replacement district, CD 20 --34? I'm sorry. Do you think that can be expected to perform as a Latino opportunity district?

A. Certainly, CD-34 is a much more Democratic-leaning district than CD-27 or CD-23.

JUDGE GARCIA: Now, I'm sorry to interrupt you. go ahead.

THE WITNESS: It should be clear, because I am just using district numbers without reference to plans, and we have plans all over the place. So if we looked at CD-34 in the C-185, in the newly adopted plan, CD-34 is a more Democratic-leaning district, a more

secure district for a Democratic candidate, than was CD-27 in C-100, the previous congressional plan. So to the extent that CD-34 is a replacement for CD-27, it certainly is a more effective district than CD-27. And, of course, in creating CD-34, CD -- CD-27 in the new plan has flipped, in almost exactly the same way 23 was flipped previously, so it is CD-27 this time that is flipped into being a majority --

* * *

JUDGE GARCIA: And to refresh my memory --

JUDGE SMITH: I'm sorry. In being a majority -- what did you say?

THE WITNESS: Anglo district.

* * *

JUDGE GARCIA: Well, notwithstanding that, you have previously testified a few minutes ago that had you been advising the legislature, you would not have drawn it in the manner that it is drawn under 185?

A. I would definitely -- I mean, my first advice to the legislature would be just -- you know, in simple -- with a slight memory of history, do as little as possible to the 23rd as you can. It really has been a difficult -- it was a difficult district for the Court to draw. It was a difficult district for the legislature to draw. But, basically, enough is enough, right? Don't make this hard on yourself.

JUDGE GARCIA: Don't mess with the 23rd.

THE WITNESS: Don't mess with the 23rd. That would be my first rule for drawing the districts.

* * *

Q. Let's talk about Congressional District 23 for a bit. In your deposition, when you and I talked about the 2006 Supreme Court decision, in the redistricting litigation, that ended up invalidating Congressional District 23, you testified, quote: There are some obvious parallels between what happened previously and what happened this time. Do you recall that?

A. Yes.

* * *

A. I -- I don't count 23 as one of the seven performing districts when I evaluate C-185.

* * *

Q. In 2003, though, you had the same opinion about -- at that time, it was Congressional District 25, and where they fractured the minority community in Austin and took it all the way down to the Rio Grande Valley. I mean, the numbers were there, right? I mean, all of the numbers to form a so-called majority- minority district were there, both in population and voter registration and all with accurate numbers? But yet what did Justice Kennedy do? He severely criticized or strongly criticized what the legislature did in 25 and said it could not and would not be a replacement district for what they did in 23?

A. Yes. I would agree that was the decision on --

Q. That's what happened, right?

A. That's what happened. And, so, yes. I think - but, again, that is part of the reason that we are -- that we feel like we are all having deja vu -- * * *

EXCERPTS FROM THE *PEREZ*, No. 11-360, ORAL AND VIDEOTAPED DEPOSITION OF JOHN ALFORD

SEPTEMBER 2, 2011

* * * by looking at the district.

Q. You know it when you see it?

A. For me personally.

Q. Sure. Sure.

A. I'm not a supreme court judge so I'm not entitled to make that actual finding of law. But for me personally.

Q. No. I understand. But you raised questions about District 6 vis a vis it's compactness, so I want to get an idea of how you came to that. As I understand, it's a visual assessment.

A. Yes.

Q. So let me -- I'm going to show you, and if we could assume for purposes of the deposition that this is an accurate reflection of District 35 in the state's new plan, could you give me your visual assessment of that district vis a vis the compactness question?

A. It's not very compact.

Q. Would it raise the same sorts of -- if it was being offered by a plaintiff, would it raise the same sorts of questions that you raised about District 6?

A. I don't think it's quite as non compact as District 6, but it's definitely not a compact district.

Q. So it's a matter of degree?

A. Yes.

Q. But it would still raise the sorts of red flag for you that you've identified?

MR. SCHENCK: Objection. Mischaracterized his earlier testimony.

Q. (BY MR. GARZA) For district 6. I'm asking.

A. The first time I looked at the state map and scanned the districts, that district caught my eye as being a non compact district.

Q. I'm not suggesting you give me a legal opinion about whether you think that is legal or not. Because that's not what you did with District 6. All you said is said it raises that question.

A. Yes.

Q. All I'm asking about District 35 is does it raise the same sorts of questions for you?

A. Yes.

MR. GARZA: This is a good time -- we have to take a break. Off the record now?

VIDEOGRAPHER: Off the record 10:12.

(Brief recess.)

VIDEOGRAPHER: Back on the record at 10:21

Q. (BY MR. GARZA) Dr. Alford, before -- before we went on break we were talking a little bit about references in your report to the compactness of districts and how that played into your assessment. referring to in that sentence?

A. I'm just -- what I meant to indicate by that is that this district, like all of the districts that have been proposed as Hispanic districts for Dallas

Tarrant County, has, I guess, falls that in the range of districts where the primary issue would be that you -- how far you had to push the shape of the district to get a CVAP number that might minimally meet the standard and then in that sense is not really -- you basically can array the plans that have been put forth from plans that do not provide CVAP majority and not particularly non compact to districts that provide bigger CVAP majority and are very non compact.

In all of that, I think the underlying question then is the same question that's been around for at least 20 years about Dallas Tarrant County which is there a sufficiently geographically compact citizen Hispanic population to draw a congressional district. My look across, a fairly quick look across the proposed plans, is that there is no plan that actually has what I would think of as the legal district in Dallas Tarrant County.

Q. And you were also shown a map of CD25 under the state's proposed map, C185 -- I mean C35? Sorry.

A. Yes.

Q. And you indicated, I think, in your testimony that that district also kind of jumped out at you when you first saw the state map was your testimony?

A. It is in the current -- in the adopted state map it is clearly the least compact district in the plan. Now, it is -- it is located in a part of the state where I think we have a different conclusion about the nature of this district in the sense that I don't think

anybody says you can't draw a majority Hispanic district in that part of the state. I think everybody agrees that's true that you can draw a district there, whereas that is not true in Dallas Tarrant County. So here the question is can you draw a district there? Sure. So that potential is there and then the question is the district is not particularly compact. What might that reflect or is it sufficiently non compact that it ought not to be there? If I was drawing the districts I wouldn't draw that district.

Q. Why is that?

A. just think -- I have a personal preference for more compact districts. I certainly agree that this is not in the same category as the previous -- or this district does not go -- does not connect Travis County to the Valley, which, I think -- that's beyond the pale for anybody, in every kind of dimension you can think of for non compactness.

That same -- the extremity of that is not apparent here. I think if you're familiar with that area, that -- you don't have the kinds of differences between the Valley and Austin that you have in that corridor between Austin and San Antonio.

This is not a stretch across the state kind of district. But it still is narrower, I think, in Connector than I would prefer the district. It's a little irregular at its ends. So, again, I don't know what's -- that there is any clear numerical standard for what's legal or not legal. But I would be -- if I was drawing districts, it's not a district I would be proud of.

Q. I guess what I'm driving at is, if I think I

understand your testimony, you -- your testimony is that there is a difference between District 6 and C190 and Congressional District 35 in plan -- in the state's plan, proposed Plan C185, with regard to whether or not the district is very non compact, to use your language here, on Page 6 of your report. I mean, is that what you're saying that one is very non compact and the other is not quite as very non compact?

A. They're both non compact districts. They are both comparatively non compact. If I was going to pick sort of a district in the current plan that, sort of in the sense of compactness is most closely compatible, that certainly -- if I was trying to point out, just for hypothetically -- if I was trying to point out that there's some non compact districts I might focus on 35. But my question with 35 would be sort of what is substantively different about that, and the reason that I point out the district in Dallas is that the failure of the district in Dallas illustrates a failure to meet Gingles 1.

The non compactness of District 35 doesn't illustrate a failure to meet Gingles 1. There are district that can be drawn there that are more compact than that, certainly legal districts that are majority Hispanic.

Everybody's issue with Dallas Tarrant is to try to show that there is -- to you meet Gingles 1 in Dallas Tarrant. And I think what this illustrates is, particularly in comparison to the other proposal, is that you don't meet Gingles 1 in Dallas Tarrant County.

Q. What do you understand -- do you have any

opinion as to what the intent was behind the creation of District 6 in C190? Do you know?

A. I mean, I don't know anything about the -- I have no inside knowledge about what happened to the drawing

EXCERPTS FROM THE *PEREZ*, No. 11-360, ORAL DEPOSITION OF ERIC OPIELA

August 22, 2011

* * *

A. Yes.

Q. So your testimony is that those e-mails and other correspondence, whether they were news articles printed, at least those are true and accurate copies of what appear to be the originals?

A. To the extent I sent them, yes. Some didn't send, and so I'm just relying on what I see.

Q. Okay. But certainly the ones you sent or received your testimony is those were true and accurate copies?

A. Yes.

Q. Thank you. I'm going to hand you what's been marked Exhibit 1.

(Exhibit No. 1 was marked.)

A. Thank you.

Q. And these are in no particular order, Mr. Opiela. I just selected these out of the voluminous package because I had some questions about them?

A. Okay.

Q. If you know, fine; if you don't -- this one we started out with is not actually one that you are listed as a "from" or a "to," but it appears to be an e-mail sent by Congressman Smith to Mr.

Interiano asking who is responsible for the Aaron Pena switch. Do you know if that refers to the switching of parties?

A. I didn't write this e-mail, but my belief it was.

Q. Okay. Now, it indicates in this e-mail that "EO," which I assume is you, just told me that Interiano said that we would be finished by Thursday and Congressman Smith says no way; he has to talk to all 23 members again. And the rest of the e-mail speaks for itself.

What my question is is at that point in time, was there a draft congressional redistricting map that had been circulated by members of the congressional delegation to the state legislative staff people working on redistricting?

A. No. We had not provided a draft map to the Legislature by that point.

Q. My questions really want to go to the issue of when that first map appeared. I mean, I assume that congressional members, based on all these e-mails I've ready, that at some point there was a map sent down to Texas from the congressional delegation; is that correct?

A. Yes.

Q. Okay. And do you know roughly when that was?

A. That was -- the map that was distributed to members of the Legislature?

Q. Yes, sir.

A. On or about April 12th of 2011.

Q. How is that map transmitted from the delegation. Was it through you?

A. I was asked to deliver the packet that Lamar had prepared.

Q. And who did you deliver it to?

A. Gerardo Interiano, Ryan Downton, Doug Davis, Reb Wayne.

MR. DE LEON: Do you need the spelling for that?

THE WITNESS: Which one do you need the spelling for?

COURT REPORTER: At the end.

A. Are you asking who it was delivered to among the members of them Legislature?

Q. (BY MR. HEBERT) Yes, sir. State officials or staff members.

A. Okay. Two additional people were Representative Todd Hunter and Travis Richmond.

Q. Representative Travis Richmond?

A. No.

Q. Were these people that you were told to give the plan to or are these people you made the decision to deliver the plan to?

A. Every communication I had was on behalf of my clients.

Q. Who is Reb Wayne?

A. Reb Wayne is the executive assistant to the lieutenant governor.

Q. And Representative Hunter is a member of the Legislature?

A. Yes.

Q. And he's a Republican?

A. Yes.

Q. And where is his district represented, roughly what part of the state?

A. Nueces County, Nueces, San Pat, and Aransas counties.

Q. Travis Richmond, who is he?

A. A staffer for the Governor.

Q. Now, do you know who drew the map that you delivered on April 12th?

A. Yes.

Q. And who would that be?

A. Me.

Q. When did you start working on that map. As soon as the census data came out or early on?

A. That particular map -- I can't recall a specific date. I was hospitalized with appendicitis for a week a couple weeks before that. And it was before that point, but I can't remember exactly when.

Q. Well, that's a good way to kind of demarcate time periods.

A. Yeah.

Q. So it might have been, say, in March, perhaps?

A. Perhaps.

Q. Okay. And when you drew the map, I take it that did you have any instructions on were you given instructions, I'm not asking for the instructions. I'm asking if you were given instructions on what to draw when you drew the map?

A. I met with each of my clients.

Q. And that would be the Republican members of the congressional delegation?

A. Yes.

Q. Did you meet with all of them?

A. Yes.

Q. And I take it that part of that -- those meetings were to get their input before you actually sat down and drew the map?

MR. DE LEON: Hold on. I'm going to – to the extent

MR. HEBERT: Without asking for the specific communication.

MR. DE LEON: -- substance of the

Q. And you don't remember the number of that map, what number that plan was?

A. No. No.

Q. We may get to it later.

A. Yeah. In fact I'm not certain it even had a number. I want to say -- I mean, this is

literally 6 months ago sort of, so I might have vague recollection about this. I think it was a 25/11 configuration. But that's -- without seeing the map and -- I mean, I'm sure that I could refresh my memory. There was -- it was in the produced documents.

Q. Okay. If you could turn to the next page. Not making much head way here through the package?

A. Sorry.

Q. That's okay partially because I'm asking you a lot of questions about each of these.

The next page there's an e-mail from you to Ryan Downton and Mr. Interiano and Congressman Smith; correct? At the top?

A. Yes.

Q. And it's a heads up, you say. Changes in CD12. And that's Congresswoman Granger's district; correct?

A. Yes.

Q. All right. And it was-- "Charlie Geren," it says, "is going to offer an amendment to Plan C144."

And this is on June 8th. And you describe what that amendment would do. Charlie Geren is a member of the legislature?

A. Yes.

Q. And he's from the Fort Worth area; correct?

A. Yes.

Q. And below that is a message to you from Matt Leffingwell. Who is Matt Leffingwell?

A. Deputy chief of staff for Congresswoman Granger.

Q. Okay. And he indicated in his e-mail to *you* that they told Representative Geren about the fact that about this problem -- that's their language -- and said he would work on it today. And you indicate in your e-mail that Geren is going to offer an amendment to put downtown Fort Worth back in the congressional district rather than the Denton County Congressional District. Do you see that?

A. Yes.

Q. And you describe it as an easy fix. Do you see that?

A. Yes.

Q. Was that change made, do you know?

A. My recollection is it was.

Q. Let's move on, on the next page is an e-mail to Mr. Interiano from the same Matt Leffingwell. It poses a question from Congressman Granger about redistricting.

A. I don't know where the question is. I don't a question mark. Oh, yes, I see it at the end.

Q. And in the e-mail that Mr. Leffingwell describes in the second paragraph, a suggestion that if the population of the new congressional districts, which obviously were not known at that point, I guess, would be around 701,000?

A. No, they were known at that time.

Q. That's right. It was late December that they came out. And he indicates that Congressman Granger was told that if she were to loss Wise County, that would meet the requirement and that losing Wise County makes sense, he goes on to describe. Do you see that?

A. Yes.

Q. Did you ever talk with Mr. Leffingwell or -- let me go back: Did you ever talk to Mr. Interiano about this request or the suggestion about taking Wise County out of Congresswoman Granger's district?

A. No. I don't think I ever did talk to Mr. Interiano about it.

Q. Well, let's move on then.

A. I don't think I knew about this e-mail until it was produced.

Q. Okay. And on the next page there's an e-mail * * *

EXCERPTS FROM THE *PEREZ*, No. 11-360, ORAL DEPOSITION OF MARC VEASEY

August 19, 2011

* * * districts and communities. I believe that under the map that was passed, the current plan that was passed, not the current plan, but the plan that was passed by the C185, that it -- those same communities, you know, that there are less opportunities for them to be able to play a meaningful role in electing congressional members of their choice. So I'm very concerned about that.

Q. Okay. Now, is -- it says by reconfiguring every congressional district. The harm isn't simply that there's reconfiguring. The harm is the manner in which the reconfiguration was done; is that right?

A. Yes. That is correct.

Q. Okay. Paragraph 4, I think it relates to something you were just saying. Paragraph 4 at the bottom of Page 2. Let's let the ambulance go by. It says the states's plan was drawn to ensure that population gains in minority communities from 2000 to 2010 did not afford minority voters increased electoral opportunity under the state's plan, it said, although -though -- that was a period, right?

A. Uh-huh.

Q. What is your understanding of the basis of that contention?

A. The biggest thing -- and I can tell you just from being a resident, lifelong resident of the Metroplex,

it's clear, and the census numbers back me up on this, that the Metroplex is two of the fastest growing

areas in the entire country for African-Americans and Latinos. As matter of fact, you could easily draw a district -- a Hispanic opportunity district and an additional African-American opportunity district besides the one that's currently there, which is Congressional District No. 30, that Eddie Bernice Johnson represents, that the white population in the Metroplex has grown so much that you could have another district. And the state, with the way the maps was drawn, absolutely did not afford minority voters increased opportunities to elect the candidate of their choice.

Q. Let me ask a more specific question, Mr. Veasey: The contention is that the plan was drawn to ensure that population gains did not afford minority voters increased electoral opportunity.

Now, you've described, as I understand it, the possibility of additional, you call them opportunity districts, that's the term you used?

A. Yes.

Q. What is the basis of your contention that the plan was drawn to ensure that population gains in minority communities, that the growth did not afford minority voters increased electoral opportunity, rather simply that that's the effect of the plan?

A. Well, I think the biggest -- probably the most glaring and obvious example of that would be when you look at Congressional District 30, that district was already, you know, sufficiently African-American enough to -- for the voters in the southern part of Dallas County to elect the African-American candidate of their choice which has been Eddie

Bernice Johnson for at last the last 20 years. And that district basically was packed and included areas that were once not too long ago majority white areas. Now they're majority African-American areas, and those neighborhood and precincts were unnecessarily put in Congresswoman Johnson's district. So that would be just one example of how minority voters were not afforded, you know, increased electoral opportunity.

Q. Well, I guess -- and we'll talk about this more as we go through the complaint. I'm trying to understand your understanding about the intent of the Legislature. That is, did the Legislature in enacting -- we'll call it Plan C185 or the state plan, is it your contention that the legislature had the intent of specifically ensuring that minority voters were not afforded an increased electoral opportunity?

A. Yes, that's my opinion.

* * *

A. Yes.

Q. So is it your contention here that the Republicans were acting with a racial animus, a racial intent, or with a political intent?

A. Racial.

Q. And what's the basis -

A. And political.

Q. I didn't mean to interrupt. So it's racial and political?

A. Yes.

Q. What's the basis for your -- well, first, the political one, I think, is self-evident. You said it's an attempt for the Republicans to continue to control the delegation. I guess that's control it vis a vis Democrats?

A. Control it by maximizing the number of Republican seats.

Q. That's the political one; I understand that with respect with what's alleged here to be a partisan gerrymander.

Explain to me the racial component of that allegation?

A. The racial component of that allegation would be that -- like I stated earlier, you know, despite the fact that the growth is overwhelmingly Hispanic and African-American, that the Republicans that drew the map, they figured out in a very, you know, clever, racially schemed way, how to draw the map as to -- so those numbers would be virtually meaningless. They even figured out a way how to even, in my opinion, possibly reduce the number of effective seats that African-Americans and Hispanics control in our Texas delegation.

Q. Okay. It goes on to say the plan apparently does so because it favors one class of candidates over another and disfavors a class of candidates to their detriment as compared to another class of candidates.

Tell me about the class of candidates that's being favored and the class that's being disfavored, please.

A. The class of candidates that are being favored are candidates that would be elected by majority Anglo constituencies.

Q. Okay.

A. And those candidates -

MR. COHEN: We're going to go ahead and drop the network now.

Q. (BY MR. COHEN) I'm sorry. Please continue. Sorry for the interruption.

A. And the African -- and that would definitely favor the candidates that were selected by Anglo citizens over candidates that could be selected by African-American or Hispanic voters.

Q. Okay you haven't mentioned Democrats, at least in this context. And you're a democratic representative; is that correct?

A. That's correct.

Q. So the class of candidates that's being favored is Republicans, right?

A. Yeah. The white candidates that would be selected by white voters would be Republicans; that would be correct.

Q. And the disfavored candidates, are they Democrats?

A. The candidates that African-American and Latino voters normally choose to represent their communities usually are Democrats and they would be the ones that would be disfavored.

Q. Okay. Now it says in the next sentence that Republican leadership did not extend meaningful opportunities for meaningful and effective participation in redistricting. Now, define "meaningful" as it's used here.

A. I would say that meaningful redistricting would be, you know, first having hearings in the major areas and allowing African-American and Latino citizens to be able to come and testify for or against these plans. And I don't think that those hearings were done favorably so that African-American and Latino candidates would be able to, you know, voice, whether or not they thought the plans were fair.

The second thing I would say is that I also believe that the way that the committee, the way that the redistricting committee, and I was a member of the redistricting committee as a state legislator, I would say that a lot of the map drawing and a lot of the changes that were done were done in secret. They were done to keep the African-American and Latino members of the redistricting committee sort of discombobulated and not really knowing what's going on. And I thought that that was also unfair, and made the process of -- and then the participation part of being able to draw fair maps for all races impossible.

Q. You actually raised a bunch of questions in my mind. You said there was an unwillingness or insufficiency of opportunities of hearings; I think you said in the major areas or they important?

A. At least -- yeah. I know that -- when I say that, I'm generally referring to where I live in the Metroplex.

Q. Sure. I guess that's what I want to make sure. We're talking about geographic areas and not like areas of discussion?

A. Right. Exactly.

Q. So, for example, it's your contention there were insufficient hearings held up in the Dallas-Fort Worth area?

A. That would be correct.

Q. And lack of an opportunity for participation by citizens to testify at hearings?

A. Correct.

Q. Then you talked about the redistricting committee. You're talking about the house committee?

A. That is correct.

Q. Did you attempt to discuss the plan with, I guess -- first, let's take it one step back.

If the committee was being run in a way that you've described as unfair, who was running it and describe the operation that you contend was unfair.

A. The chairman of the committee, Burt Solomons, man's and, forgive me, because I don't remember everybody's last names, but Ryan and Gerado who worked for the speaker, I believe. One of them may have been counsel to Solomons. But it's my understanding that both of those gentleman in some capacity worked for the speaker of the Texas house, Joe Straus.

In my opinion, they did not consult with or ask members of -- that were African-American or Latino

that served on the redistricting committee, which I was a member of, questions or did not seek advice from us from how fair lines could be drawn.

Q. Did you -- their names, if I think you're talking about the right people, Gerado Interiano and Ryan Downton, except I called them Mr. Interiano and Mr. Downton. That's who we're talking about.

Did you attempt to communicate with Mr. Interiano or Mr. Downton?

A. Well, I'm -- I'm certain that I probably did. But, you know, I'm the member and their staffers -- and they should be reaching out to the members of the committee to ask us how we feel about these different issues. But instead oftentimes what happened was -- and I did talk with Burt as someone who is -

Q. Burt is Mr. Solomons?

A. That would be Mr. Solomons. I did talk with Mr. Solomons oftentimes and conveyed to him what I thought. But, obviously, that was not taken into consideration.

And those house staffers never -- as far as I'm concerned, they never talked with me and asked me my opinions on how things should be down. And as staffers I thought they should have.

Q. Did they discuss things with your staff?

A. One of them went to law school with one of my staffers. But I'm not sure exactly what they did or did not discuss.

Q. Okay. Do you know specific attempts by your staffers to discuss these matters with Mr. Interiano or Mr. Downton?

A. I cannot recall.

Q. Okay. Was it, in your understanding, just you that was sort of excluded from the process of the committee or was it all the Democrats? Was it all the minorities?

A. From what I heard it was all the minorities on the committee. And that all -- and that, just from like talking with different people just having casual talk on the house floor, that a lot of the changes that were made were done very quickly, you know, very last minute and no one really knew about them and they certainly didn't have any of our, you know, the things that we were saying during the committee hearing, the map did not reflect any of those.

Q. Okay. Are there -- to your knowledge, were there any Anglo democratic members of the committee?

A. There was one. There was Joe Pickett. And Mr. Pickett is a member of the Legislature from El Paso.

Q. Is it your contention that Mr. Pickett was excluded from the process?

A. You know, I don't know if he was excluded from the process or not. I know he's Mr. Solomons' roommate.

But I don't know what type of conversations that he and Mr. Solomons had.

Q. Okay.

A. Or he and the staff members, for that matter, had.

Q. Do you know if any Democratic legislators saw the plan before it was made public, any other Democratic legislators?

A. I have not heard any of the Democratic legislator say that they saw any of the plans before they were made public.

Q. Same question about the Republican legislators; do you know whether any or all presumably -- the plan was presented by Chairman Solomons?

A. Correct.

Q. So we can understand that Chairman Solomons knew it?

A. Right .

Q. Do you know of any other Republican legislators to your knowledge that saw it before the plan was made public?

A . No, I'm not aware of any Republican legislators that saw it.

Q . Okay. The next couple of pages are fairly technical stuff. Although I do want to take you to page -- to the Paragraph 9 through Paragraph 18.

A. Okay.

Q. Those are all the plaintiffs in the case, of course.

A. Okay.

Q. Your Paragraph 11, you're Marc Veasey and you know yourself.

A. Yes.

Q. Okay. Do you know any of these other plaintiffs?

A . Yes, I do.

Q. How do you know them?

A. Worked with one of them and know another one of them just from, you know, being a part of the African-American community in Tarrant County. It's someone that I've known for a while.

Q . Okay. Did y'all decide together file this complaint?

A. We did not decide together, but I do know that one of the plaintiffs on here that I've definitely

* * *

answer that.

Q. Okay. Is there anything different about 2010 than, say, 2008? 2006? 2004? 2012?

A. Every election cycle is different.

Q. Okay. Now, Paragraph 43 says election data it illustrates -- this is the last sentence, "Election data illustrate that under the state's plan District 23 will no longer permit Hispanic voters to elect their preferred candidate of choice."

Again, according to Paragraph 36, they actually didn't elect their preferred candidate of choice in 2010 anyway, did they?

A. No.

Q. All right. Paragraph 44, the first sentence: "Even if the state's map had maintained the number of minority opportunity districts at 11, doing so despite the addition of four new congressional seats in the

face of the dramatic population growth constitutes unlawful retrogression and dilution."

Let's talk about that dramatic population growth a little bit more. We talked about that before. You said large increase in both the African-American and the Latino populations in Texas; correct?

A. Correct.

Q. How many seats -- I think we talked about this before. How many seats would be necessary, in your opinion, to not constitute unlawful retrogression and dilution?

MR. HEBERT: Objection. Asked and answered before.

Q. (BY MR. COHEN) You can answer.

A. In my opinion, you would at least need one additional African-American seat and at least, I believe -- and, you know, but at least two to three other Hispanic seats.

Q. Two to three?

A. Yes.

Q. Now, what if -- what if there was a large influx of Latinos but -- and African-Americans, but that large influx isn't spread all the way across the state evenly? For example, if all of the increase were in El Paso?

A. Okay.

Q. Would the rest of the state still be entitled under -- how do we apportion those seats -- does that still require, you said, a new seat in DFW; right?

A. Yes.

Q. Would you still put a seat in DFW?

A. I mean, that would be so speculative. You would have to look at the numbers to see exactly what warranted seats where and so, I mean, it would be highly speculative for me to say if all the population was -came in El Paso County where the lines would be drawn.

Q. Okay. All right. Paragraph 45 alleges that the state's proposed congressional plan, again, I guess that's C185, creates egregious electoral disparities in North Texas. Is that what we talked about before?

A. Correct.

Q. Large numbers of Hispanics and African-Americans in the Metroplex?

A. Correct.

Q. All right. Now, there's numbers talked about in Paragraph 45. But there's not actually any allegation of citizenship rates. That's a correct statement, isn't it?

A. I do not see anything about citizenship rates on here.

Q. Okay. And, in fact, it says the area, it said, it lost 156,742 Anglos, gained 600,000 Hispanics and African-American.

So if I understand what you just said, we have a rough number and it's rough because it's only to the closest 100,000. But we don't know how many of those are citizens, right?

A. I do not know how many of those are citizens.

Q. Okay. Paragraph 46, under the state's * * * mind?

A. Yeah. One instance comes to mind. One of the -- the area that is not in my district that I mostly grew up in is an African-American community in west Fort Worth known as Como, C O M O, the Lake Como community, which is largely an African-American community. And after the last round of redistricting on the senate, the state senator that represents that area, you know, for the last, I mean who currently represents that area has never come to the neighborhood once.

Now, before when the map was old, was drawn the old way and Mike Moncrief, who was the state senator who is outgoing major, who is no longer the major, he just finished probably about 3 weeks ago, a month ago, finished up his 8-year stint. He felt that he had to go and get, you know, my grandmother and the people that went to church out there, he felt that he needed to be there all the time.

The current senator has never been there to my knowledge and from the people that live there, family members, friends I've known forever. And, you know, and she has no intimate or personal knowledge of what it is like to represent that community, what the needs are of that community. So that area has just basically just been an area just -- it was drawn so she would have sufficient population in her district so that community wouldn't be able to be an influence like they were for the previous state senator that represented that area. So I think that happens a lot in redistricting.

Q. So it seems to me you're saying it's better when -- I would say everyone's a part of the process, but it sounds like it's from the representative's perspective. When that representative is contending for every vote rather than when he or she has written off one group or one part of the district, right?

A. Right.

Q. That's a fair statement. Okay. Same true for congress?

A. Yes.

Q. Do you feel as though the current representative, for the district we're talking about, is that Representative Burgess or Representative Granger?

A. Representative Burgess and Representative Granger.

Q. Do you feel as though they are competing for every vote?

A. No, I do not.

Q. Whose vote have they written off, in your belief?

A. The African-American and Hispanic vote, in my opinion. There's no doubt they've written off both of those votes.

Q. We were talking about our kids before.

A. Uh-huh.

Q. My kids go to public schools. Are your kids in school yet?

A. Starts kindergarten next week. Will go to public school.

Q. Public school. So would you agree that, for example, a commissioner, a counsel person, a school board member should have kids in the school; right?

MR. HEBERT: Object to the relevance of the question.

A. Not necessarily.

Q. (BY MR. COHEN) Okay. Because that person is able to represent the interest of the school regardless of whether they have a child in the school?

A. If they are listening to the voters and the people that make up the population of that particular, you know, political body or political subdivision, then I would say that then they're doing their job.

Q. Okay. The same is true for a legislator.

A. Yes.

Q. Let's just take a minute. (Brief recess.)

Q. A couple more questions. Let's go back to the

* * *

EXCERPTS FROM THE *DAVIS*, No. 11-788, ORAL AND VIDEOTAPED DEPOSITION OF RYAN DOWNTON

August 12, 2011

* * *

Q. Okay. Was there any attempt to create an additional Latino majority district in South Texas?

A. And you're on the Congressional map now?

Q. Yes.

A. Well, we did create a new one in South Texas. There was an effort to create a district anchored in Cameron County.

Q. But in terms of evaluating districts that run along the coast of Texas, that's not a new district,

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right?

A. You could consider that a swap for I believe District 27.

* * *

Q. When you were drawing the maps, what sorts of data would you pull up on the computer?

A. Population of the district, deviation, SSVR, Hispanic population, Hispanic voting age population, black total population, black voting age population. I'd pull up different election results. I'd pull up a lot of different things.

Q. Okay. So that would be in the statistics that you were looking at as you were tracking the changes

that you were making, all of those different characteristics?

A. Yes.

Q. In terms of the shading of the map, what -- what were the things that you would put on the map?

A. To shade by precinct or by county?

Q. Yes. Would you shade the --

A. Yes.

Q. And what would you use?

A. I would shade based on different election results. I think I could shade by SSVR, I'm not positive.

* * *

Q. You're reading my mind. What I was going to ask you about was to differentiate the statistics that you saw about districts once you had run a report on them and the kinds of statistics that you saw on districts while you were actually mapping, which I will call running statistics. So, for example, did you keep a running statistic of the total population of the district and its deviation so that while you were mapping you could see how close you were from the ideal district population?

A. Yes.

Q. Did you also ever use a particular political race as part of your running data while you were mapping?

A. I usually -- I kept a lot of running data, so yes.

* * *

Q. And tell me what political race or races you would use.

A. A bunch of different ones. It would depend on the purpose for why I was having it up there. I would often have the McCain race up there, Abbott, Dewhurst, Perry. And, I'm sorry, I'm just giving you one side of the race, but I would have often both major candidates up. Different elections from different years.

* * *

Q. Is the 27 in the benchmark not anchored in Cameron County?

A. It's split -- I'd say split anchored between Cameron and Nueces. And the current congressman there is from Nueces. I'm not sure, but I think the congressman before that may have been as well, I'm not sure. But I know they had some concern that Cameron County as it was drawn was not controlling that district.

A. My guess would be that the majority of registered voters from the old 27 are now in the new 34.

* * *

EXCERPTS FROM THE *DAVIS*, No. 11-788, ORAL AND VIDEOTAPED DEPOSITION OF RYAN DOWNTON

August 31, 2011

* * *

So the old District 27 and the new District 27, if you're trying to ask what changes, they're totally different districts.

* * *

Q. I'm not going to force you to do this math in your head, but does it seem right that based on these numbers, Nueces County's registered voters make up just over 50 percent of the total registered voters in the benchmark CD 27?

A. Yes.

* * *

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General
December 1, 2011

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Dear General Abbott:

I was disappointed to receive your letter of December 1, 2011, which grossly mischaracterizes the United States' position as to the litigation you filed, *Texas v. United States,* Civ. No. 11-1303 (D.D.C.), seeking preclearance under Section 5 of the Voting Rights Act for Texas' statewide redistricting plans. I am writing to correct the numerous factual inaccuracies and errors of omission in your correspondence.

The Department of Justice is committed to resolving this redistricting case, and all of its many other pending redistricting cases and administrative submissions, as quickly and cooperatively as the circumstances permit. However, to be clear, the State of Texas bears the responsibility for any delays in the preclearance process- by waiting until the end of its legislative session and even into a special session before passing its redistricting plans, by further delay after passage in seeking preclearance, and by inexplicable litigation decisions that have slowed the resolution of this matter.

The U.S. Census Bureau released Texas' redistricting data to the State on February 17, 2011. Although the State Legislature passed its House and State Senate redistricting plans on May 23, 2011, and passed the Congressional plan on June 24, the State nonetheless waited until July 19 to seek preclearance for any of those plans through this litigation.

Thereafter, almost immediately after this action was filed, the Department offered an expedited trial date of October 17 - but the State sought summary judgment rather than attempting to proceed to a trial. The Department has maintained from the outset that this action could not be resolved by summary judgment, as the Court's order denying the State's motion now makes clear. Indeed, at a September 21 scheduling conference, the Court itself offered the State the opportunity of a speedy trial setting instead of proceeding with a summary judgment motion, but the State also refused that offer and insisted on seeking summary judgment. The State has taken this course knowing full well that candidate qualifying under the State's own schedule was to begin in November 2011.

The concerns you express regarding the conduct of discovery in this matter are unfounded. The Department conducted all discovery within the schedule set by the Court, and has devoted substantial resources throughout to resolving this matter as expeditiously as possible.

The Department cannot agree to withdraw its motion to hold the case in abeyance while the Supreme Court considers the State's applications for

a stay in *Perez v. Perry*, Civ. No. 11-360 (W.O. Tex.). As we noted in our motion, under the governing case law, the court-drawn interim redistricting plans from *Perez* could become the new benchmarks for determining whether the statewide redistricting plans at issue in the D.C. District Court case will receive preclearance under Section *S*. Indeed, you acknowledge that possibility in your stay applications. If the benchmark plans change, then the case in the D.C. District Court will be a different case, and new discovery and expert analysis will be required. It would be a waste of resources to spend time preparing for a trial in mid-December based on the current benchmarks, if we will know very shortly whether the plans adopted by the *Perez* court will be new benchmarks.

We also disagree with your suggestion that the Department objected to the State's request for a status conference. We did not; we advised the Court only that a status conference would be premature before the Supreme Court's decisions on the State's stay requests, and in fact the district court has today scheduled a status conference for December 7, 2011.

Once the Supreme Court issues its ruling on the stay requests in the *Perez* case, which we anticipate will happen in the next few days, we are prepared to proceed. However, I am sure that you can appreciate the need to be efficient with the resources of the Court, the Department, the State, and the other parties to this litigation; and we should not go forward until we have a clearer idea of the issues to be decided for Section 5 review.

I have great confidence in the dedicated career attorneys in my office, who not only have handled this matter with the utmost professionalism and diligence, but also have maintained a respectful working relationship with the attorneys in your office. We remain prepared to focus on cooperative efforts to make the most judicious use of the resources of the Court and all the parties.

Sincerely,

Thomas E. Perez
Assistant Attorney General

MEMORANDUM PRODUCED BY ERIC OPELIA IN RESPONSE TO DISCOVERY REQUESTS

April 5, 2011

From: Ashlee Vineyard
[avineyard1@gmail.com]
Sent: Tuesday, April 5, 2011 3:40 PM
To: Gerardo Interiano
Subject: Fwd: FW:
Attachments: 20110405161822763.pdf

Please see attached. It is confidential from Lamar.

"CONFIDENTIAL—Let's discuss before you show anyone. – Lamar"

Redistricting Proposal

- Maintains the core of current districts unless requested otherwise
- Strives to be fair and reflect the changing demographics of Texas
- Creates four new districts as allowed by the census results
    1. One new likely Republican district in East Texas
    2. One new likely Republican district in South Texas
    3. One new Voting Rights Act district in South Texas that leans Republican
    4. One new Voting Rights Act district in the Dallas-Ft. Worth area
- Results in 25 congressional districts that lean Republican and 11 that lean Democratic.

EXCERPTS FROM TRIAL TESTIMONY OF TERRYSA GUERRA

MR. NOTZON: Robert Notzon for the NAACP. May it please the Court.

Terrysa Guerra, having been first duly sworn, testified as follows:

EXAMINATION

BY MR. NOTZON:

Q. Please state your name for the record.

A. Terrysa Guerra.

Q. And were you born in Texas?

A. Yes.

Q. And where were you raised?

A. Los Fresnos, Texas.

Q. Okay. That's down in the Valley?

A. Yes. It's around Brownsville.

Q. And did you go to university in Texas?

A. I did. I went to Texas A&M University in College Station.

Q. Okay. And what do you do for a living?

A. I work on different campaigns, either consulting or staffing different campaigns around Texas.

Q. And would you say how many counties would you have operated in?

A. Numerous counties throughout Texas, North Texas predominantly but Central Texas and South Texas as well along the border.

Q. Okay. And have you had an opportunity to observe what we're calling coalitions between African Americans and Latino voters?

A. Absolutely. Specifically over the last two election cycles when I worked in North Texas.

Q. And which candidate were you working for?

A. Chris Turner. He was a state representative.

Q. Out of what county?

A. Tarrant County.

Q. Okay. So would you say the majority of your focus in the last two election cycles, that would be '08 and '10, 2010, were in the Tarrant County area?

A. Yes.

Q. Okay. And could you tell the Court, please, what you have observed in terms of black/brown coalitions in Tarrant County?

A. Sure. When I first started working in Tarrant County in 2008 we found that these groups and organizations of African Americans and Latino communities had already existed. So when I went in we began talking to them. We talked to – I remember specifically an African American group in southern Fort Worth, a Latino group in northern Fort Worth, another African American group in south Arlington. So we were talking to these groups and when we brought them together we found that they had already been working together on different neighborhood issues or issues unrelated to a candidate. So they were already -- had working relationships.

So when we brought them together we gave them tools obviously to advocate for another cause that was important to them which was getting the candidate I was working for elected. And so while I was there we also brought other folks from those respective communities into the mix and we found that we were also forging new relationships between these different communities as well. So that was my experience in 2008 and when I went back in --

Q. And let me ask a question.

A. Sure.

Q. In 2008 were those coalitions successful in electing the candidate of their choice?

A. Absolutely. And by the way, these were all the same coalitions that helped Senator Wendy Davis while she was a candidate in 2008 because her House district was totally in that Senate district as well.

Q. Okay.

A. And then when I went back in 2010 I found that those relationships, even the new ones that we had forged between these communities, still existed. And so we continued to bring more of the different voters and folks and leaders in these respective communities into the mix as well.

Q. And in 2010 were they successful that year?

A. No, they were not.

Q. We've heard testimony in this trial about the heavy Anglo vote that came out in 2010. Would you tell the Court what you * * *

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.

On Appeal from the United States District Court for the Western District of Texas

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JOINT APPENDIX, Vol. 4 of 5

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11-713, 11-714, 11-715, Appeal Docketed December 12, 2011
11-713, 11-714, 11-715, Probable Jurisdiction Noted December 9, 2011

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Offer of Proof: Sworn Statement of Brian E. Rowland, September 14, 2011

I, BRIAN E. ROWLAND, declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

1. My name is Brian E. Rowland
2. My address is 110 Bledsoe St. Prairie View, Texas 77446
3. I am a registered voter
4. I live in Prairie View community in Waller County, Texas.
5. Prairie View A&M University is an historically black state university in the Prairie View community.
6. I am a private businessman who is currently a city councilman in the City of Priarie View.
7. I am the former Texas NAACP Youth and College Division President.
8. In 2002, Waller County's redistricting plan was rejected and overturned by the U.S. Department of Justice
9. The 2000 Census indicated that Waller County had a voting age population of 24,277 of whom 7,601 (31.3%) were black and 3,871 (15.9%) were Hispanic.
10. The 2002 proposed redistricting plans contained only one district in which minority persons were a majority of the voting age population. According to the information the County provided to DOJ, the black percentage of the voting age population in proposed Precinct 1 voting age population drops to 29.7 percent.

11. Within the context of Electoral behavior in Waller County, the County had not established implementation of its proposed plan would not result in retrogression in the ability of minority voters to effectively exercise their electoral franchise.
12. Moreover, the viability of alternative plans demonstrated that the potential retrogression of the proposed plan was avoidable.
13. DOJ also found that racially polarized voting served to undermine minority voting strength in Waller County. DOJ's analysis of county elections showed that minority voters in Precinct 1 had been electing candidates of choice since 1996, that those candidates were elected on the basis of strong, cohesive black and Hispanic support and that white voters did not provide significant support.
14. In 2004, Waller County Criminal District Attorney Oliver Kitzman threatened criminal prosecution against Prairie View students who would register to vote in Waller County.
15. Over 5000 students and supporters marched 7.2 miles to the courthouse to protest
16. DOJ wrote to the County demanding that it comply with the previous injunction.
17. The Texas Secretary of State and the Texas Attorney General also condemned the attempt to unlawfully restrict the students' right to vote.
18. Five students and the local NAACP chapter sued the District Attorney, demanding the right to vote in the 2004 election without

improper prosecution. Eventually, the County settled and agreed to let the students vote.

19. The issue did not end there.
20. Less than a week after the lawsuit was filed, and a month before the election, the Waller County Commissioners' Court voted to greatly reduce the availability of early voting at the polling place near Prairie View A&M—an important change since the primary election date was during the students' spring break.
21. In effect, this voting change was an attempt to achieve the same end as the district attorney's unlawful voter intimidation campaign through another means.
22. It thus presents a textbook example of the brand of persistent and adaptive discrimination that gave rise to Section 5 more than 40 years ago.
23. The NAACP filed a Section 5 enforcement action to enjoin Waller County from implementing this change without Section 5 preclearance.
24. County officials abandoned the change, technically mooting the suit (although its objectives were fulfilled).
25. In 2006, Waller County voting officials for seven months failed to process the voter registration cards of hundreds of Prairie View students.
26. On December 8, 2006, Waller County Commissioners' Court voted to abolish the County Elections Office amid complaints of voting irregularities during the Nov. 7 general election.

27. The Waller County Leadership Council filed a complaint with Texas Attorney General Greg Abbott, alleging county election workers have systematically discriminated against a disenfranchised black voters.
28. Herschel Smith noted that after waiting three to four hours to vote, students at the university were required to cast provisional ballots because their names were not on election rosters.
29. A provisional ballot, counted only after a voter's eligibility is verified, is cast when someone shows up to vote and credentials for voting in a particular district cannot be verified on Election Day.
30. In 2007, Waller ISD officials called a bond election in the wake of a voting scandal that saw the entire Waller County elections office abolished. The bond election had not been pre-cleared by DOJ and a criminal investigation was ongoing.
31. On July 24, 2007, Waller officials made an agreement with DOJ to provide additional polling sites, including joint elections with Prairie View, in exchange for DOJ approval of the $49.3 million bond election.
32. On August 4, 2007, Waller ISD passed a resolution to co-locate and have joint elections with the City of Prairie View for future elections.
33. ON August 8, 2007, DOJ received the Waller ISD resolution which details future voting sites.
34. DOJ approved the $49.3 million bond election.

35. On March 19, 2008, the Waller ISD superintendent called DOJ and changed his position on the earlier Waller ISD promise to DOJ to have elections with the City of Prairie View.
36. The district had planned to spend only $230,000 of the total $49.3 million in the African American community.
37. What is more appalling is that the district planned to build a $17 million football stadium, even as a 50 year old black elementary school sat neglected, decaying and without complete air conditioning.
38. African American voters in Waller County continue to suffer from voter intimidation, suppression and other irregularities.

Dated: September 14, 2011

S/Brian E. Rowland

Brian E. Rowland

Excerpts from the Trial Testimony of Dr. Richard Murray

Q. Okay. And did you do any analyses to determine whether or not there was some indication of racially polarized voting?

A. I have done some.

Q. Okay. And if you want to turn over to page 18 of your report and that's table 5. Table 5, is that one of the analyses that you performed?

A. It is.

Q. Okay.

A. What you see in this table is -- first, if you look at the primaries. And of course in Texas we don't register by parties or voter --

Q. Could you explain what the analysis was and then go into that part and let us know what you did?

A. I wanted to look at primary vote participation patterns in urban Texas. And because I'm very familiar with Harris County I chose to use a method called homogeneous precinct analysis. Harris County works pretty well in that respect because we have 885 voting precincts and we have over a hundred that are overwhelmingly dominated by black voters. And you can take any sample. They all tend to vote the same way. There's no issue of selectivity. We have now about 30 very substantial Hispanic majority precincts where clearly Hispanic voters are the dominant driving force. And we have a lot of precincts, although it's a shrinking number to be sure, that are still clearly dominated by Anglo voters.

So this is one of numerous technologies and in some -- some areas because precincts are so mixed up you can't use this method, but in Harris County it's fairly reliable. And it enables us to see in particular communities which primary they're choosing. And you have a very identifiable pattern.

Q. Okay. Now, could you explain your conclusions as to black, Hispanic and Anglo precincts?

A. Well, African Americans who vote in primaries vote almost entirely in the Democratic primary. There's virtually no Republican African American vote. There's a little bit but it's little in Hispanic areas. The Hispanic primary voters, like African Americans, largely vote in the Democratic primary. By contrast most Anglos in Texas, if they vote in a primary these days, vote in the Republican primary. And, you know, voters in a sense vote with their feet in primaries. They're free to vote in either primary in March. But for the last 15 years we've seen this definitive pattern that the two large minority populations are voting almost exclusively in the Democratic primary if they vote. And the minority of whites who choose to vote vote almost exclusively, except in a few pockets like Travis County, in the Republican primary.

Q. Okay.

A. So that's to me one indication because, again, it's free choice for every voter. In March of every other year you can go vote in a primary. And we see very, very distinct differences of racial ethnic vote choice in terms of which primary to participate in.

Q. Now, I think you extended your analysis over into table 6, did you not?

A. Yes.

Q. Okay. And was this another homogeneous precinct analysis that you did?

A. Same methodology, just looking at the November general elections where participation is much higher. We've got a far higher vote in general elections than in our combined primaries. Not surprisingly, given that almost no blacks vote in Republican primary, the African American vote is overwhelmingly not only Democratic by primary preference, but the even larger turnout in November of even-numbered years is in the Democratic primary, you know, with numbers like 97, 98 percent support for the Democratic candidate.

The predominantly Hispanic precincts in the two most recent elections were voting at about the 80 percent level with African Americans for the Democratic nominee. And the Anglo-dominated precincts were voting overwhelmingly Republican.

So much more so than the nation we've become a sharply polarized state in our racial and ethnic voting, and that's increased in the last couple of election cycles.

Q. Okay. Because I know also attached to your report you had an analysis of how many Anglos actually voted for President Obama in the last election; is that correct?

A. I did. I wrote a chapter in a book called "The Obama Effect" and I think it was attached to this report. It summarized nationally the President got

about 43 percent of the votes of Anglos. He got about half that percentage in Texas and it was very clumped in a few areas like Travis County, upscale neighborhoods in Houston and Dallas. Outside of those areas the President struggled to get 15 percent -- or then Senator Obama to get 15 percent of the vote of Anglos. So we really saw a sharp polarization. Not unique to Texas. It was very noticeable across America from Appalachia in western Pennsylvania all the way to Texas. Interestingly, no increased polarization in the American west, but it sure was here.

Q. Now, if we turn back to table 5, first of all, what is the -- is there significance to individuals of different races voting in different parties that -- that has racial consequences?

A. Well, it's certainly kind of an unobtrusive measure of where they see their political interests lie. For Anglos that used to vote overwhelmingly in the Democratic primary they've almost completely abandoned it except again for a few patches of the state. Minorities don't vote that heavily in primaries, but to the extent they choose to do so in Texas they almost entirely vote in the Democratic primary.

Excerpts from Congressional Plan C185 and the Voting Rights Act: A Consideration of General Relevant Factors, with a Specific Focus on the Deficiencies of the Enacted Plan in the Dallas/Fort Worth and Houston Areas

A report by

Richard Murray,
Professor of Political Science, University of Houston*
August 7, 2011

* * *

C. The 2010 Census and the 2011 Redistricting Process

The 2010 Census showed Texas, as expected, had grown much faster than any other populous state in the union. The net population gain of 4,293,741 resulted in four congressional districts being added to the 32 existing seats, the largest gain in Texas history. As in other recent censuses, minority population growth accounted for the great majority of change, with Hispanics contributing 65.0% and African Americans 13.7%. For the first time in state history, non-Hispanic black growth (589,352) exceeded non-Hispanic white growth (547,955).

Table Four: Racial/Ethnic Composition of Texas Population: 2000 and 2010

	2000	2010
Non-Hispanic Whites	11,121,317	11,669,272
Non-Hispanic Blacks	2,429,966	3,019,318
Hispanics	6,669,666	9,460,921
Asian/ Others	630,871	996,050
TOTAL	20,851,820	25,145,561

	Change	
Non-Hispanic Whites	547,955	4.92%
Non-Hispanic Blacks	589,352	24.25%
Hispanics	2,791,255	41.85%
Asian/ Others	365,179	57.88%

TOTAL	4,293,741	20.59%

Source: U.S. Census Bureau

The legislative redistricting process in 2011 could hardly have been more different than 10 years earlier. With super-sized Republican majorities in both the Texas House and Senate, redistricting maps were constructed in private and revealed very late in the regular session. Public hearings were minimal, and minority members had little opportunity to preview the House and Senate maps that were passed in the regular session, or the congressional map approved in a special session called by Governor Perry.

The resulting legislative maps (H283 for the House and S148 for the Senate) and the congressional map (C185) repeated the bottom-line results from 2001 and 2003 in that there was no reflection in the end products of the enormous demographic changes that have occurred in Texas. If these current maps go into effect for the 2012 elections, it will mean that VRA-protected minorities in Texas will have seen virtually no improvement in their opportunities to elect representatives of their choice since the maps produced in the early 1990s when the combined black and Hispanic populations state totaled 6,316,265 out of 16,986,510 (37.2%), compared to 12,480,239 out of 25,145,561 (49.6%) in April 2010.

This legislative failure to improve protected-minority voting opportunities in Texas despite huge population gains relative to the already over-represented Anglos is rooted in several profound

changes in American and Texas politics The most notable of these is the return to what has become statewide an effective one-party system in Texas. And that one party is dominated by very conservative Anglos who have no interest in improving opportunities for minority voters to elect candidates of their choice. In fact, quite the opposite is true. Any gains by VRA-protected minorities are now going to come at the direct expense of the dominant Anglo political establishment in Texas. For much of the 20th century, that dominant establishment was rooted in the Democratic Party. Now, the new Republican Party plays that role.

This reality makes it more critical than ever that the protections afforded for Hispanic and black Texans under the Voting Rights Act not be abandoned. The ills that Barbara Jordan experienced in the 1960s have not been cured, and the remedies she supported are still needed.

II. The Polarization of the American Electorate Along Racial and Ethnic Lines and Its Consequences for Texas Politics

A. The Breakdown of the New Deal Coalition and the Polarization of the American Electorate

During his twelve plus years in office, President Franklin Roosevelt forged an electoral coalition that dominated American politics for nearly 40 years. As Alan Abramowitz has pointed out, that coalition:

* * *

> ... was based primarily on group loyalties, some of whose origins could be traced back

> to events that took place long before the New Deal, and secondarily on the widespread association of the Democratic Party with prosperity and the Republican Party with economic hardship in the aftermath of the Great Depression.[16]

The principal components of the New Deal coalition were white Southerners and white ethnic working class voters in the North. That coalition began to fray in the 1960s and had largely disappeared by the 1980s. Key to its collapse was the shift of white southern conservatives from the party of Roosevelt to the party of Reagan. Republican hopes of building a comparable large and durable coalition to the New Deal combination have been frustrated over the last 20 years as a new political realignment based much more on political ideology has emerged. Issues that were either unknown or ignored in the 1930s like gun rights, abortion, and gay marriage have assumed great importance in guiding voters' partisan leanings in the 21st century. As economic voting faded, new political lines were drawn.

White men, especially blue-collar workers, became more conservative and women, especially single women, became more Democratic. Republican gains with less-well educated, church attending adults were partly offset by losses among better educated, more secular whites.

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[16] See "Ideological Realignment among Voters," in *New Directions in American Political Partue*, ed. by Jeffrey Stonecash (New YorK: Rutledge, 2010), p. 126.

That leaves us with the General Elections as the key test of racial polarization, because these are the only partisan contests that reflect the racial and ethnic diversity of the state's population. Table Six looks at the same three sets of precincts in Harris County that we used to compare differences in party primary participation in 2008 and 2010.

Precincts with a Black VAP above 85%

	2010 Gov Vote			2010 Party Vote		
Pct	**Dem**	**Rep**	**Dem%**	**Dem**	**Rep**	**Dem%**
031	849	17	98.0	735	7	99.1
068	847	22	97.5	743	11	98.5
136	902	36	96.2	695	13	98.2
156	1265	43	96.7	1008	18	98.2
158	952	22	97.7	823	7	99.2
294	883	13	98.5	772	5	99.4
Mean %			97.4			98.8

	2008 Pres. Vote			2008 St. Party		
Pct	**Dem**	**Rep**	**Dem%**	**Dem**	**Rep**	**Dem%**
031	1463	18	98.8	1216	12	99.0
068	1371	9	99.3	1163	5	99.6
136	1462	47	96.9	1026	16	98.5

156	2080	56	97.4	1570	27	98.3
158	1666	22	98.7	1407	10	99.3
294	1348	17	98.8	1075	7	99.4
Mean %			98.3			99.1

Precincts with a Hispanic VAP above 85%

	2010 Gov Vote			2010 Party Vote		
Pct	**Dem**	**Rep**	**Dem%**	**Dem**	**Rep**	**Dem%**
011	388	93	80.7	275	58	80.2
062	477	124	79.4	323	88	78.6
065	489	111	81.5	376	75	83.4
079	634	138	82.1	443	89	83.3
530	259	60	81.2	219	45	83.0
560	212	54	79.7	159	35	82.0
Mean %			80.8			8108

	2008 Pres. Vote			2008 St. Party		
Pct	**Dem**	**Rep**	**Dem%**	**Dem**	**Rep**	**Dem%**
011	496	185	72.8	391	69	85.0
062	619	277	69.1	445	113	79.7
065	610	236	72.1	472	116	80.3

079	855	343	71.4	649	136	82.7
530	323	134	70.7	268	57	82.5
560	339	113	75.0	236	43	84.6
Mean %						82.5

Precincts with an Anglo VAP above 85%

	2010 Gov Vote			2010 Party Vote		
Pct	**Dem**	**Rep**	**Dem%**	**Dem**	**Rep**	**Dem%**
040	1010	529	65.6	388	349	52.6
130	435	1015	30.0	132	803	14.1
213	621	1440	30.1	137	1079	11.3
303	513	1459	26.0	154	1119	12.1
420	484	1795	21.2	167	1391	10.7
442	347	1141	23.3	110	909	10.8
451	355	1382	20.4	110	1117	9.0
Mean %			30.9			17.2

	2008 Pres. Vote			2008 St. Party		
Pct	**Dem**	**Rep**	**Dem%**	**Dem**	**Rep**	**Dem%**
040	1238	851	59.3	550	419	56.8
130	501	1331	27.3	242	865	21.9

213	616	1922	24.3	225	1185	16.0
303	570	1911	23.0	235	1233	16.0
420	578	2626	18.0	348	1547	18.4
442	345	1569	18.0	174	996	14.9
451	377	1718	18.0	199	1197	14.3
Mean %			26.8			22.6

These homogeneous precinct data confirm the statewide exit poll from 2008 which showed black voters in Texas supported Barack Obama by a margin of 98% to 2%, and Hispanic voters favored the Illinois senator by a margin of 63% to 35%. Anglos supported Senator McCain by a 73% to 26% margin. Clearly, General Election voting in Texas is highly polarized along racial-ethnic lines with sizeable majorities of Anglos voters opposing the candidates favored by black and Latino voters.

> Little ability to reach out to minorities as is 1991, or even 2003 and make the case that enhancing Republican opportunities could be beneficial to minority voters at the expense of white Democrats.

Because of the last point, a major difference in the 2011 redistricting cycle in Texas compared to earlier years was that the combination of great GOP success with Anglo voters, and the accompanying polarization of black and Hispanic voters toward Democratic nominees in recent general elections, created essentially a zero-sum game. Minority gains in representation opportunities would have to be to

the expense of Republicans, and any further Republican gains would have to be at the expense of protected minority voters. That sharp reality has brought the Voting Rights Act into play. This is because while the 2011 mapdrawers will likely say that their changes this year were nothing more than the usual partisan gerrymander like the Democratic maps in 1981 and 1991, or their own maps in 2001 and 2003, and thus should pass muster with the Department of Justice and the federal courts, the reality is that the 2011 maps in question have violated the voting rights of protected minorities. How was this done?

First, by the overall conduct of the 2011 districting process which was almost entirely done out of public view, especially with respect to C185, which was made public late in the 2011 special session and quickly enacted with no meaningful opportunity for protected minorities to have their reservations to the proposed map taken seriously. These actions provide evidence of intentional discrimination in congressional redistricting.

Second, Plan C185 does not reflect the reality that 82% of the state's growth was Hispanic and African American, which entirely accounted for the four new Texas seats. But rather than using that surplus to enhance minority voter opportunities, the new map actually reduces the opportunity for black and Hispanic voters to elect persons to represent them in Washington, D.C.. Under the map used in the 2010 elections, 11 of 32 districts gave minorities the opportunity to elect congress members. Because of the unusual nature of turnout in that election year (very high voting by older conservative Anglos, and

average turnout by minorities for a midterm election), in the 23rd and 27th opportunity districts, candidates were elected in 2010 who did not have the support of protected Hispanic voters. However, with the next cycle being a presidential year, both existing districts would once again give minority voters an effective opportunity to elect candidates of their choice. But plan C185 lessens that possibility in the 23rd District, by substantially increasing the Anglo vote percentage in Bexar County where there is a well documented history of polarized voting in General Elections against candidates supported by Hispanics. This effectively cancels out the new opportunity district running from Austin to San Antonio. The enacted Plan 185 also does some fancy switching with the 27th District, by shifting it north into the heavily Anglo Coastal Bend Counties instead of its historic alignment south to Cameron County. That maroons 206,293 Nueces County Hispanics in an Anglo district while removing them from an effective minority district.

With no new net opportunities elsewhere on the state map, C185 produces a map very likely to have 26 districts dominated by Anglo voters in 2012 (72 percent) compared to 10 (28%) by protected minorities. That is more than a little out of line with the overall state population which Hispanics and Blacks outnumbered Anglos 12,480,239 to 11,669,272 in April, 2010 – a gap that will certainly have widen even further by November 2012.

Finally, there is considerable evidence many Republicans were concerned about the discriminatory effect of the congressional map being developed out of public view. On April 4, 2011, the

online political website *Politico* ran an article by John Bresnahan entitled "Lamar Smith, Joe Barton in Texas map dust-up."[28] According to Mr. Bresnahan,

> "A bitter, behind-the-scenes fight has broken out among Texas Republicans over redistricting, pitting Rep. Lamar Smith against longtime colleague Rep. Joe Barton....
>
> Smith, chairman of the House Judiciary Committee and the point man on redistricting for Texas Republicans, is pushing for Texas Republicans to evenly split four new districts between Republicans and Democrats, *acknowledging that Texas's surging Hispanic population will gain minority-majority seats in the Dallas and Houston areas.* (My emphasis)
>
> ... Smith brought in an official from the Texas Supreme Court last week to tell GOP lawmakers that there is no way to craft solid GOP districts that would meet Justice Department or federal court approval....[29]

Given the C185 map it is quite clear that Congressman Smith and the Texas Supreme Court official were ignored. A maximalist plan that actually further reduces the already limited opportunities for protected minorities to elect representatives was passed into law by the Texas Legislature.

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[29] Ibid., pp. 1, 2.

While there are numerous problems across the state with Plan C185, I focus my attention on the largest metropolitan areas of Texas, Dallas-Fort Worth and greater Houston. Specifically, I look at how the map works in Harris and Fort Bend Counties in metropolitan Houston, and in Dallas and Tarrant Counties in north Texas.

Plan C185 and Harris and Fort Bend Counties

Table 8 shows Harris and Fort Bend Counties added about 920,000 people between 2000 and 2010, and all of that growth was among minorities, as the two-county Anglo population declined by 42,422 in the area. Hispanic growth in the two counties was 615,885, and with a black increase of 209,375, for a combined gain of 824,260. Given that the ideal population for a congressional district in 2011 is just 698,488 it would seen obvious that opportunities for black and Hispanic voters in Harris and Fort Bend Counties ought to be significantly enhanced by a new map, especially with four additional districts coming to Texas. Furthermore, black and Hispanic growth in the metropolitan region tended to occur in the same areas, as happened in the eastern half of Fort Bend County and southwest Harris County. Coupled with the strong recent unity of General Election voting by blacks and Hispanics in the region, it would be easy to create a second local district, in addition to the existing 29th District, that would give Latino voters the opportunity to elect candidates of their choice while maintaining the effective African American opportunity districts Nine and Eighteen. Plan C185 obviously fails with respect to creating a new Hispanic district, and violates a number of traditional redistricting

principles in dealing with the 9th and 18th which are effective opportunity districts for African American voters.

* * *

number of close parallels. Dallas and Tarrant Counties have a higher Anglo population, but they are also losing Non-Hispanic whites at a faster rate than Harris and Fort Bend, so this difference is rapidly closing. The north Texas counties have somewhat smaller Hispanic and Asian/Other populations than the Houston area counties, but they have almost exactly the same African American population share.

Table 10: Dallas/Tarrant Counties Compared to Harris/Fort Bend Counties

	Dallas/Tarrant		
Total Population	4,177,173		
Non-Hispanic Whites	1,721,828	41.2%	-156,732
Hispanics	1,388,917	33.3%	+440,89
Non-Hispanic Blacks	808,882	19.4%	+164,786
Asians/ Others	257,546	6.2%	+62,953

Harris/Fort Bend

Total Population	4,672,834		
Non-Hispanic Whites	1,561,506	33.4%	-42,422
Hispanics	1,810,507	38.7%	+615,885
Non-Hispanic Blacks	902,181	19.3%	+199,375
Asians/ Others	404,820	8.7%	+143,270

What the combined counties do not have is *comparable congressional representation.* There are three congressional districts in the Houston area that are minority opportunity districts – the 9th, the 18th, and the 29th. There is only one such district in Dallas/Tarrant County. What accounts for this?

Several explanations are possible. Maybe protected minorities do not vote together in Dallas/Tarrant Counties the way they do in Harris/Fort Bend. Not true. Black registration, turnout, and General Election partisanship is essentially the same in both areas, as is the case with Hispanics. Table 11 shows the voting pattern in 20 Dallas County precincts in the November 2008 and 2010 General Elections. The table reports the vote percentage received by Lupe Valdez in her successful Sheriff contest in 2008, and the vote

percentage received by District Attorney Craig Watkins, an African American, in 2010. The five heavily African American precincts gave overwhelming support to Ms. Valdez (mean of 95.7%) and Mr. Watkins (97.8%). In precincts that contain large numbers of Hispanic and blacks – the second grouping in the table – we again see very large majorities for both Lupe Valdez and Craig Watkins. Obviously both populations in these precincts are supporting the same candidates. The third grouping is of precincts with large Hispanic majorities, and here again we see large majorities of voters backed Valdez and Watkins. The last set of precincts has a combined protected minority population of less than 10 percent. They gave, on average, less than a quarter of their votes to the candidates supported by minority voters.

Another possibility for the big difference in minority voter representation iu Dallas and Tarrant Counties compared to Harris and Fort Bend is that the north Texas minorities are more dispersed and thus not easily fitted into compact opportunity districts. Again, that is not the case. The heavily black and Hispanic neighborhoods in the Dallas/Fort Worth area were

Table 11: General Election Voting Patterns in Selected Dallas County Precincts in Elections for Sheriff (2008) and District Attorney (2010)

	2010 Population %		
Pct	**Black**	**Hispanic**	**Combined**
3347	89.1	9.2	98.3

3533	90.2	7.5	97.7
3540	89.4	6.0	95.4
3545	89.8	7.2	97.0
3806	85.4	8.0	93.4
Mean	88.8	7.6	96.4

Percentage of Vote Received by

Pct	Lupe Valdez Sheriff - 2008	Craig Watkins District Attorney -2010
3347	97.4	97.5
3533	98.0	99.7
3540	96.8	99.5
3545	95.4	98.3
3806	90.8	94.1
Mean	95.7	97.8

2010 Population %

Pct	Black	Hispanic	Combined
3216	35.0	61.2	96.5
3354	42.1	54.7	96.8

3502	57.7	40.2	97.9
3538	44.6	48.4	93.0
4417	36.0	71.2	97.2
Mean	43.1	55.1	98.2

Percentage of Vote Received by

Pct	Lupe Valdez Sheriff - 2008	Craig Watkins District Attorney -2010
3216	89.9	96.5
3354	95.4	92.5
3502	98.3	96.3
3538	92.5	93.2
4417	81.8	83.9
Mean	91.6	92.5

2010 Population %

Pct	Black	Hispanic	Combined
1103	2.4	92.4	94.8
1106	3.6	93.2	96.8
1125	5.9	91.8	97.7

3322	7.7	85.2	92.9
4445	2.5	94.9	97.4
Mean	4.4	91.5	95.9

Percentage of Vote Received by

Pct	Lupe Valdez Sheriff - 2008	Craig Watkins District Attorney -2010
1103	72.9	65.1
1106	81.5	66.0
1125	75.2	70.7
3322	77.4	79.8
4445	80.2	71.9
Mean	77.4	70.7

2010 Population %

Pct	Black	Hispanic	Combined
1114	108	7.7	9.5
1135	5.0	2.0	7.0
1208	0.0	3.0	4.0
1216	0.2	4.4	4.6

1231	0.8	9.1	9.9
Mean	1.6	5.2	6.8

	Percentage of Vote Received by	
Pct	Lupe Valdez Sheriff - 2008	Craig Watkins District Attorney -2010
1114	29.0	28.3
1135	24.5	23.2
1208	12.4	10.2
1216	18.9	16.1
1231	35.4	32.4
Mean	24.0	22.0

Sources: Population data is from 2010 U.S. Census.

Vote percentages are taken from Dallas County Election Archives for 2008 and 2010. fairly close together in 2000. Since then, the combination of out-migration of Anglos and the rapid growth of mixed neighborhoods like the second set to precincts in Table 11 has consolidated a broad swath of territory in over half of Dallas County and a third of Tarrant County that provides ample population for three compact minority opportunity districts. It is now easier, in my opinion, to draw three minority opportunity districts in Dallas and Tarrant Counties

in 2011 than was the case in Harris and Fort Bend Counties in 2003 when three such districts were produced by the Texas Legislature.

The reason for the lack of minority representation in Dallas and Tarrant Counties is simply a matter of a discriminatory congressional map that has been used to dilute minority voters' impact for 20 years. In 1991 the Democratic map-makers created a single new opportunity district for African Americans, but used the remaining minority growth to shore up incumbent white Democrats. In 2003, the Republican map-makers packed as many minorities as possible into the 30th District, and then craved up the large remaining, and now much larger minority populations to minimize their electoral opportunities. That was hard to do in 2003, and is even harder in 2011, but the authors of C185 have pulled it off. The enacted map brings 11 congressional districts into the Metroplex. Ten of them are dominated by conservative Anglos voters with a history of polarized voting against minorities. That leaves the lonely 30th as the only opportunity district for protected minorities. So here in an area where Senator Obama won 45 percent of the metropolitan area vote with overwhelming support from black and Hispanic voters, these same voters, now more numerous than in 2008, will have an opportunity to elect a candidate of their choice in one of eleven congressional districts in the area. To achieve this result, Plan C185 creates a tangle of districts like the 5th and 6th that start out in rural and small town communities and cut into Tarrant and Dallas Counties to get enough people to reach the 698,488 required, but not enough minority voters

to give them an opportunity to elect a representative of their choice. Other districts like the 24th combine enough low participation/high population minority precincts with high participation/low population Anglo neighborhoods to effectively deprive minorities of the opportunity to elect candidates of their choice.

The slicing and dicing of the Dallas/Fort Worth area raises, in my opinion, the issue of whether a partisan gerrymander can be so extreme as to deprive local citizens of their 14th Amendment right to equal protection of the laws. The U.S. Supreme Court in *Davis v. Bandemer* (1986) held that such a claim might be justified but defined no manageable standard to adjudicate such and in *Vieth v. Judelirer* (2004) could not agree as to whether partisan gerrymanders could be adjudicated. The Texas congressional map provides a good opportunity to revisit this issue, given the unequal treatment of citizens in the Dallas/Fort Worth area (and their fellows in Travis County, Texas who were split among five very oddshaped districts). All Texans may be equal, but some are far more equal than others under Map C185.

Map C185 makes uses a number of very clever maneuvers in the Dallas/Fort Worth area to thwart the great demographic changes moving across the area. One way to look at how those demographic changes have impacted local election outcomes between 2000 and 2010 is to take a fixed unit that is not subject to human design, and track what happened in the last six General Elections. The unit I focus on is Dallas County, whose necessarily compact boundaries (it is a square) have not been

altered since it was organized out of Nacogdoches and Robertson Counties in 1846.[30]

Table 12 looks at this fixed district – Dallas County – that is experienced very rapid population change over the last decade. This population change, we previously noted, was driven by a declining Anglo population accompanied by the increasing population of protected minorities, minorities that have had minimal opportunities to elect candidates of their choice to Congress. Because we have shown that the Anglo and protected minority populations in Texas – always somewhat polarized – have become even more so in days of President Obama and the Tea Party, we would expect that the population changes would be reflected in General Elections in Dallas County as a whole because redistricting to dilute minority voting opportunities is not possible.

Let us look at the evidence. In 2000, the combined voting age population (VAP) of blacks and Hispanics in Dallas County was 729,367, or 93.1% of the 2000 Anglo VAP of 783,657. By 2010, the combined minority VAP in the county was 946,841, or 143.9% of the Anglo VAP, which had fallen to 657,889. Assuming the change was linear, we can estimate what the minority VAP percentage was in each general election between 2000 and 2010 which is done in Table 11. We can then look at the contested county-wide General Election races in the county to see how candidates supported by protected minorities fared to the polls each November of even-numbered years.

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[30] *Texas Almanac, 1968-1969*, p. 265.

In 2000, few Democrats were on the county-wide ballot, reflecting the accepted wisdom that running in Dallas County was a waste of time, especially with a local resident, George W. Bush, as the Republican presidential nominee. The conventional wisdom was on spot – Republicans swept the seven contested county contests while losing the black and Hispanic vote. In 2002, the Democrats nominated their first Hispanic candidate for governor, Tony Sanchez, and former Dallas Mayor Ron Kirk, an African American, won the nomination for an open U.S. Senate seat. That combination inspired 50 contested races in 2002. Ron Kirk narrowly carried the county, as did three other candidates supported by minorities, but 92 percent were defeated. In 2004 just 12 races were contested. President Bush carried the county, but by only 10,000 votes and the minority-supported Democratic nominees won six of the other 11 contests, for a 50% success rate.

That relative success in a traditionally Republican county resulted in 56 contests in 2006. Candidates supported by Hispanic and African American voters won 52 of these, a 93 percent success rate. In 2008, minority supported candidates in Dallas County lead in all 19 contested elections. We noted earlier that 2010 was a great year for the mostly Anglo Tea Party movement, especially in Texas. Minority voting dropped, while older whites voted at near presidential levels. But even with these strong headwinds blowing, minority supported candidates like District Attorney Craig Watkins won 47 of 48 local contests. Long-term demographics trumped short-term political trends.

What Table 12 clearly demonstrates in Dallas County is that over the period from 2000 to 2012 the combined dramatic increase in protected minority populations, coupled with the decline of Anglo voters polarized against the former, turned the county upside-down politically. In 2000 almost no minority-supported candidates even bothered to file for office. By 2010, virtually every county office was held by persons like Sheriff Lupe Valdez and District Attorney Craig Watkins – candidates elected by a coalition of black and Hispanic voters, with a little help from inner-city Anglos. They enjoyed this great success because they operated under a fair map – drawn by Texans in 1846 and never altered – that gave these protected minorities the opportunity to elect candidates of their choice. Congressional map C185 denies the majority of these same voters, and their counterparts in Tarrant County that opportunity. As such, it should not be allowed to go into effect.

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Excerpts from the Trial Testimony of Congresswoman Eddie Bernice Johnson

* * *

first congressional district, that went into Collin County, as well as Tarrant County and Dallas County, my constituency was extremely diverse.

As a matter of fact, it has been described as being the most diverse district in the country, with a number of Asians, Latinos, African-Americans and others. I have never lost that constituency, even though my lines have changed. I still work with all of them, because I am responsive to them. And now I am all in Dallas County, which is the fourth 10 district I have had since I have been in Congress. I have an Asian advisory committee, Latino advisory 12 committee, business, health, seniors, veterans, groups that I meet with periodically to listen to their concerns; also, the Southern Sector of Mayors that I meet with. Some are in my district geographically and some are not, but all of them seek me out for assistance.

Q. And are you aware of any problems that minorities have had in getting representation from members of Congress when their group does not vote in the majority for those members of Congress?

A. Yes. That's when I get -- out most of the time, and that was a basis of which I pleaded with my colleagues to help to get at least a Latino district in the north Texas area, and I said the real reason why is because I need someone to assist me with casework.

I was told: Just don't do it. We don't do it. Well, it is clear, because I am doing it, and the workload is pretty heavy.

Q. Could you describe your current district and how the communities of interest within that district interrelate?

A. Yes. The district is geographically diverse, but we work together. I have annual diversity summits with youth that we bring from all over the Dallas County area. It is very international in the area now. We try to bring in people from -- that are immigrants from all over the world together, so they can learn about each other, so they can accept the differences and value and celebrate that diversity. We have an annual meeting when school is out to try to engage young people, so they won't get into law breaking, when they don't have a lot to do. And we have an annual, what we call Family Day, where we bring all of our cultures together and have different ones to do artistic things, as well as different participations to show the difference from Native Americans, Asian Americans, and there are a number of different segments of the Asian American culture, Latinos, African Americans, to make sure that they intermingle and can understand each other.

Q. Now, you have had an opportunity to, have you not, to look at the adopted map, plan C-185?

A. I have.

Q. And it is notable, is it not, that that map has combined black and Hispanic, I guess, voting age population over 85 percent?

A. Yes. I was very disappointed to see that map. I thought it was unreasonably Balkanized, that it does not have my house nor my office in it. It went out of the way to pick up a large federal prison, which upped the African American minority population falsely. Many of the areas that I worked very hard in for economic development and all of that had been removed, all of the downtown area, where I worked very, very hard to make sure that we had funding for our Dallas area rapid transit system. The schools that had specialties, I have been very supportive. I am the ranking member of the Science, Space and Technology Committee. And it has been broken.

I mean, it is an unnecessary design that cannot be done accidentally. It unnecessarily pairs large pockets of minority population, who have enough population to represent themselves. And although I have enjoyed working and will continue to do in a very big coalition, like any other minority, when people have enough people to represent themselves, that's really what their first desire is, and that's what I was working hard to try to make sure, that it would be a Latino district, because this is the area with the largest growth in our state, perhaps even in the nation. And I have not had any complaints of my representing, but I also know the way I -- the way that African Americans push and try to get representation over the years, it was not because we necessarily disagreed with people who were representing us, but when you know that you have someone representing you that you don't have to explain what it is like to be a minority, then that is your first choice.

Q. Now, in regards to the map that was actually adopted, you attempted to work with individuals you believe to be responsible for getting formal input into the map for different congresspersons; is that correct?

A. Yes. We, as a delegation, met bipartisanly, which we do. And Lamar Smith, Congressman Lamar Smith was the point person that we listened to. He was our leader. He indicated that if we got together and worked out a district map that it would probably be acceptable to the House of Representatives and to the State legislature, and we worked very hard at that. I didn't -- in north Texas, I didn't have a regional group necessary to work with, but I did work with Congressman Marchant. I went and asked other congresspeople about certain

geographical areas. But, basically, Congressman Marchant and I worked closely together to carve out a district that would elect a candidate of choice for the Latino voters. I had no reason to believe that that would -- we met several times, and then after that, we didn't hear very much, but I kept in touch with Congressman Smith, and he kept ensuring us that things were moving along. After I turned the map over to him that we worked on, we did some little changes to the edges around it, because at that time, at the first map, once it was put into numbers, my home and office was left out of it, and we restructured it and we were able to correct that. I asked them several times how it was going. We went to his office to look at the map. And then when he instructed us to meet regionally, I did meet with some state-elected people, House and Senate in the

Dallas area, to share the map and to discuss it with them, and I gave each of them copies.

Q. Now, let me back up a second and pick up on one of the points that you just made. I think what you have indicated to this Court is that you specifically and directly communicated to the drafters of the map that your home and your office were left out of the proposed district and you wanted them to correct that?

A. Yes.

Q. Okay. And was that corrected?

A. It was corrected in the map that the delegation submitted. It was not corrected in the map that came out of the legislature.

Q. And it is true, is it not, I think that your office and the office of both Congressman Green and Congressman Lee as

well were not included in the adopted districts?

A. That is my understanding.

Q. And can you tell this Court any white incumbent congressperson who did not have their office in the currently proposed map?

A. I am not aware. I am not aware of any.

Q. And why is it important for you to continue to have your office within your district?

A. Well, I have been in this location a while. Constituents all over the area, even as far away as Amarillo, know where

that office is, and they come. The entire north Texas area, we have people coming for assistance, and it is convenient for them. It is easy, accessible, and the rent is not nearly as high as it would be in other places. The parking is free.

Q. Now, can you tell the Court what your response was when you found out that there was a map and it didn't include your recommendations?

A. I was extremely disappointed. As a matter of fact, I thought at first it might have been a joke, because it just seemed like it was so unnecessarily chopped up, in areas that I had worked so hard. And it paired -- it put a large number of Latinos and a larger number of African Americans in the same map, and a large number of African Americans that were in a federal prison that were counted into the total, but obviously don't have voting rights.

I never had that area before, and I never had to count them as a part. But when I looked at that map, I started smiling, because every jail, every prison in the entire area had been included in that map.

Q. I want to show you your district in the adopted plan. Could you color shade there for black and Hispanic majority?

Now, you have won your seat, have you not, with the different levels of African American voting age population within the district, have you not?

A. Yes.

Q. And I know you won with 38 percent or less in that district, have you not?

A. Yes.

MR. BLEDSOE: Could we increase it a little bit to show 30?

BY MR. BLEDSOE:

Q. Now, you can see your proposed district there with the shading indicating black and Hispanic population in the majority in those areas. And in looking at that, can you tell us what areas that were included in that map that you did not virtually the same in percentage with both Latino and African American. Same thing with the city council, county. We actually elected our first Latino county commissioner, and that was a coalition of us working together to do so.

Q. And have Asians also worked in that coalition?

A. Yes.

Q. Could you describe to the Court how Asians have worked in that coalition?

A. The Asian population hasn't been that high, but those that live in the area and even many that live outside that

particular area have worked with us. All of us working together have produced Asian judges, as well as Latino and African-American.

Q. Okay. And have you had occasion to even to look at some of the return data relating to Asian, Hispanic and African-

American returns for some of the 2008 and 2010 elections?

A. Yes.

Q. And what did you determine from what you saw?

A. The Asian votes are not as concentrated as the African American, Latino, but we worked together in support of each other's candidates and voted together, and I think all of the records would indicate that we did vote together to elect candidates of choice.

Q. Did you have occasion to even look to see if there was any1 kind of cohesion between those voters in the primaries?

A. Yes, there was some. We could tell, there were times when there would be Latino and African Americans in the same primaries. When we came together as a group of people in different advisory groups and what have you, we determined the candidates which we would support.

I remember in a City Council race, well, the city councilperson that represents me now is Latino, and had an African-American opponent, but I had no hesitancy in supporting the Latino, who did win.

Q. Now, in terms of the Voting Rights Act, do you think it is appropriate to join the African Americans and Latinos together to create a Section 2 district?

A. Yes. It is very difficult not to depend one on the other, because we live together, we vote together, we usually want the same kinds of things from our representatives. I chaired the Congressional Black Caucus, and when I was chair, I organized a tri-caucus, and we take strong stands together on many issues. I would have to organize the Asian Pacific American caucus in the Congress when I first got there, because I had a large number of Asian

constituents, and now I think it is eight or nine Asian Pacific Americans that now carry that caucus on. So in the tri-caucus, we tend to take united divide people up like that without planning it. It is too easy to put it together where they can elect people of their choice that would give them the opportunity to speak up for the needs of that population.

Q. I think I understand what you are saying, and let me ask you, do you have a belief in reference to whether or not the circumstances that you are aware of indicate intentional discrimination in the crafting of this matter?

A. Without a doubt in my mind, it had to be done with the pure purpose of splitting those voters up, so they could not elect a candidate of their choice.

Q. And by the way they crafted CD-30, does that present any difficulties with tension within your district and in the

future as a possible impact on the coalition between black and Hispanic voters?

A. Indeed. You know, when you have a large number of people and you unfairly pile them together, then it creates tension, because everybody wants representation. They want to be able

to identify some of the people that look like them, that think like them, that live with them, to represent them. And when that is totally ignored and almost by design denied, it is a very big problem.

Q. Now, you are familiar, are you not, with the NAACP congressional intervenor's map that is C-193

and the proposed district is a partial map that are included within that

A. These were people that we coalesced with the Latino community, and we made a conscious effort to -- I don't know that we even had a printed slate, but we knew by the way that we worked to get out the vote which ones we were going to support, and that is where the vote went.

Q. Now --

JUDGE GARCIA: Mr. Bledsoe, you have gone beyond the area that the State of Texas crossed on, so I will permit you five more minutes. Okay?

MR. BLEDSOE: Okay. Yes, Your Honor. That's about all I have.

JUDGE GARCIA: Okay. Thank you.

BY MR. BLEDSOE:

Q. In reference to the issue of intentional discrimination, you testified earlier that your district was Balkanized?

A. Yes.

Q. Does that support intentional discrimination in your mind?

A. Yes.

Q. And if the districts of Congresswoman Lee and Congressman Green were Balkanized as well, would that support your belief of intentional discrimination?

A. Yes.

Q. Would the failure to respond to input from you and the other two African-American congresspersons support your belief of intentional discrimination?

A. Yes.

Q. Okay. Would the fact that Anglo voters, according to Dr. Murray, would be able to control 72 percent of the congressional districts, while they are less than 50 percent of the population, would that indicate to you some support for intentional discrimination?

A. Yes.

Q. So there are many other reasons for potential discrimination other than the drawing of the district? That is just one example of intentional discrimination; is that correct?

A. That is correct.

MR. BLEDSOE: Thank you.

JUDGE GARCIA: Oh, I'm sorry.

MR. RIOS: I was just going to --

MR. FREDERICK: No questions from the State.

MR. RIOS: I was going to state that this

Congresswoman and Congressman Cuellar have a flight to Washington at 11:00.

JUDGE GARCIA: Okay.

MR. RIOS: I don't know if the Court is going to take a break, but we will get through him in 30 minutes.

JUDGE GARCIA: Okay. Well, what are you requesting?

MR. RIOS: Well, I just didn't know if you all were going to take a break.

Excerpts from the Trial Testimony of Congresswoman Sheila Jackson-Lee

* * * pools open was one of these corporate representatives here that answered the call of their particular member of Congress. That is going to be breached.

And what baffles me is that this was done to the 9th, this was done to the 30th, and now it is done to the 18th. Those communities of interest are extremely important. It is -- you can -- as big as Houston is, you can go into the 18th and find neighbors who have lived there or have had their relatives live there and have a historic understanding of this area. In the 18th is what we call Freedmen's Town. That goes all the way back to the 1900s, when they had a military army base right in that area there.

Q. So when you say that this was done to the 9th, the 18th and the 30th, are you saying that the economic engine of each was removed?

A. To my understanding, yes. Certainly, the business district in the 18th was gone. If you -- all of our offices, by the way, were taken out. I happened to be, very proudly, without arrogance, in the Mickey Leland Federal Building. Mickey Leland, of course, tragically lost his life as a humanitarian in Ethiopia. We named the Federal Building after him. The building had -- I had Barbara Jordan's furniture. That is now out of the 18th Congressional example, which, again, I worked on the fires that took place in the spring. But those meetings were not carried through. Actions started turning toward Austin, and the input that we tried to give didn't seem to be accepted, and we had no input into what ultimately -

- and that is very unusual -- what ultimately was the final result.

Q. Now, in terms of input, you brought up this idea of input with the -- to the legislature. Could you tell the Court what efforts you took to try to make sure that your district was properly constructed?

A. Yes. You are always sensitive to being in a jurisdiction that is not your own. I go with all due respect, and I did. I went to the chairpersons of the Senate Committee, I went to the chairpersons of the House Committee and gave a general idea of this very rich-in-history district that had communities of interest. As a member of the Judiciary Committee, that saw and participated intimately and helped write the reauthorization of the Voting Rights Act in 2007, I knew that retrogression was a great concern, and I spoke to those chairpersons. And I even -- when I heard that this map had come out, my understanding is that this map came out in the special session. We kept trying to keep up with all of the country is a nation of great potential, great promise, and greatness. One of the things that we were able to accomplish in the 18th Congressional District, I think, over the years is a strong bond between the business community, which would be generally considered the corporate business community, and some of the poorest constituents maybe in the nation. So there was a factor that made it important for that business district to continue to be in the 18th Congressional District. It enhanced the help that some of the schools got. Some of the -- the university would be able to access with their member of Congress, working to bring CEOs together with academic needs. So we worked together, and it all

works, because you are all in what is called one district. That means something. There is a bonding there. That is lost now.

Q. Now, is there a coalition, an elected coalition and a political coalition between African-Americans and Latinos and Asians in the Houston area?

A. Clearly, there is. We have developed strong alliances and friendships, and we have worked together on a number of issues from -- I guess immigration would be one of the most known, but we also work together on educational issues, on business issues, on opportunities for small businesses. Most of our communities are in small businesses, women-owned businesses, and they look to their elected officials to fairly give them information about the Small Business Administration or federal funding that is coming into the community. So we formed allegiances and, of course, all of our communities face civil rights issues, even today. I remember one of the most striking ones was the Torres case of the individual Campos that was thrown into the bayou, one of the striking cases that brought all of us together, as we have been brought together around the -- case, frankly, that wasn't that far away from Houston. We have worked together on a number of issues.

Q. And that was Joe Campos Torres that you mentioned?

A. Yes. That is correct. Yes, it was.

Q. And in reference to the coalition, is it your belief that in creating a new majority-minority district under the Voting Rights Act that one should be able

to, in circumstances like Houston, where the minorities operate in partnership with each other, that they can be joined together to create a group for purposes of creating a new district?

A. Could you restate the question?

Q. In terms of creating a new Section 2 district, is it appropriate in your mind to join different minority groups who work together together in order to reach the majority number of 50 percent plus one?

Excerpts from the Trial Testimony of Congressman Alexander Green

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JUDGE GARCIA: All right. Mr. Bledsoe.

MR. BLEDSOE: Your Honor, the Congresswoman Lee, because of a schedule with -- congressional schedule, can't get here until later this afternoon. She'll be here a little after 5:00. And I've spoken with other plaintiffs parties, as well as the State, and they don't object to her being able to testify when she arrives.

JUDGE GARCIA: So who do you have next?

MR. BLEDSOE: Okay. Congressman Al Green.

JUDGE GARCIA: All right. Okay. Congressman.

THE CLERK: Would you please raise your right hand, sir?(The oath was administered)

THE CLERK: Have a seat.

ALEXANDER GREEN, PLAINTIFF'S WITNESS, SWORN DIRECT EXAMINATION

BY MR. BLEDSOE:

Q. Would you please state your full name for the Court, please?

A. May it please the courts -- the Court, excuse me, and Your Honors all, my name is Alexander Green.

Q. And you're a member of Congress?

A. I am a member of Congress, having been elected in 2004 and sworn in in 2005. African-American community, especially when it came to the election of a sheriff. We elected Sheriff Adrian Garcia, the first

Latino sheriff. And communities of interest within the district worked together to get him elected. We have the area out in the Bellaire and the southwest portion of the district that we call the international district. And in that area we have the Taiwanese community. We have the Chinese community. We have the Vietnamese community. In fact, in the Ninth Congressional District the ballot is printed in three languages: English, Spanish and Vietnamese. And there are those who are working to try to get it in Chinese as well. So the district is diverse, but that diversity is something we celebrate, we appreciate and we work together.

Q. Has there been a coalition in Harris County, from your estimation, between African-Americans and Latinos and Asians?

A. I'm proud to say that Judge Armando Rodriguez who -- Justice of the Peace in Harris County, is currently Justice of the Peace. When I was a judge of the justice court, he and I formed the Black and Brown -- Brown Coalition. The Black and Brown Coalition addressed some political problems, economic problems, but also just the problem of people similarly situated working together for the common good.

Q. Now, Congressman, could you take a look at C185? And if we can look at CD 9, get a closeup on that. And let me --

A. Goodwille Pierre.

Q. And what race is Mr. --

A. He is African-American.

Q. Okay. And did it appear to you that the names being connected with minorities had anything to do with the outcome of those races?

A. It very much appears that way to me and to the persons who lost as well it seems. And I think it's -- sometimes these things are difficult to prove, but they're easy to know. We may not prove it, but we know it's there. We know it.

Q. And the African-American candidate for district attorney that year, who was running with the same party, did he lose?

A. There was an African-American who was running, Bradford, who was former police chief, Houston, Texas. And he was running county wide, along with the other candidates, and he did lose.

Q. Now, do you feel that your input was perceived in good faith in your attempts to work on the construction of a new congressional map in Texas?

A. I was very disappointed, Your Honors, because I thought that we would have the opportunity to have meaningful input. I understand now and understood then that it was not my decision. But I thought that we would have input. We did have one meeting, and this was with the congressional delegation. And the belief was that there would be follow-up meetings, but they never took place. The belief was that we would have something that might be called a congressional map that was agreed to by members of Congress, understanding that there's a majority party and a minority party, but that we would try to present something that would have some degree of credibility from the entire Texas delegation. I don't

believe that occurred. If it did, it occurred without my knowledge. I don't believe such a plan was presented.

Q. And in reference to -- for example, the area where your office is and some of the areas that were taken out of your district, did you join with Congresswoman Lee to come together with an agreement to try to make the proposed plan a little bit more digestible by making some changes to your district and hers, that both of you agreed to?

A. We tried to work through staff members to restore some of the areas that had been removed from both districts. And we thought that if two members could accomplish this, that it would be accepted. So we did try. My district office we tried to place back into the Ninth Congressional District. And there's an area that has been a part of the historic 18th Congressional District, my suspicion is since the inception, over in the Third Ward. And we tried to do what we could to restore the equilibrium.

But the time did not -- was not on our side. And also, I might add, there was also kind of a reality that we were not going to get a lot of our desires adhered to.

Q. And so you made a proposal for modification, and that proposal was not accepted?

A. Well, we tried to work out a proposal. I did submit, what I thought would work, through member Smith, whom I have great respect for, great respect. I did submit a proposal to him, and his indication was that it just wasn't -- the time -- it did not get done.

Q. Okay. Now, do you have an opinion in reference to whether or not there was any intent to discriminate against African-Americans and Latinos in the adoption of this map?

A. It is difficult to believe that it could happen by accident, the type of surgery that was performed. It's very difficult to believe it could happen by accident. If you balance accident and intent, I think that it is not -- it would not be unusual for a reasonable and prudent person to conclude that there was some intent. Now, that's looking at the map on its face. Going beyond just looking at it on its face, the way it was promulgated, not a lot of opportunity to see things as it developed, something that was sort of presented. And it wasn't a presented in a take it or leave it fashion. It was presented, quite candidly, in a take it fashion. You have -- you don't have the leave it option. You have the take it option. And so we find ourselves here today because of what happened. Not something I'm proud of. My suspicion is that Thurgood Marshall wasn't proud when he delegated Smith versus Allwright. But the NAACP is known to do what we do, and here we are again.

Q. Now, you -- you're aware that Dr. Murray has indicated that, contrary to now where African-Americans and Latinos kind of dominate the vote in 10 of the 32 districts and have influence in the vote, and in the 11th district, that this new plan only provides for ten districts that would be dominated by

African-American or Latino voters, while the other 14 districts, be -- would increase four, would be dominated by 15 white voters. That -- does that

indicate to you any value being associated with the vote of one race as compared to other races?

A. Well, it, on its face, has an appearance of unfairness. The Honorable Lee Duggan in Houston gave me words that I try to use regularly. He said, it's not enough for things to be right. They must also look right. Now, that doesn't look right. And then when you examine the substance of it and you look at the actual empirical evidence, you then find that it isn't right. In my opinion such a plan invidiously discriminates against minorities, and such a plan doesn't happen by accident.

Q. Okay. And if -- if the Court found some issues or problems with the current map, what would you like to see happen?

A. I also understand that there may be an opportunity, if the Court in its wisdom concludes that this -- this map is not constitutionally constructed, that there may be an opportunity to do some revisions. And I was not at the table when we devised C185. And it's been my opinion that if you're not at the table, you can be on the menu. I would dearly rather be at the table than on the menu, and would like to be there through either surrogates or with pen in hand to give some input so as to assure fairness, not just for African-Americans, by the way, but for Anglos, Latinos, Asians, fairness for all. I would hope that the Court would give us the opportunity to be a part of such a process.

Q. And would your experience in being in Congress when the9 Voting Rights Act was extended support your belief that African-Americans and Latinos, and

in some instances Asians, can be joined together for purposes of creating a district?

A. Yes, sir. When we passed that legislation, signed by the Honorable George Bush, I might add, of Texas -- when we passed that legislation, it was our desire that an opportunity district for minorities, and then we can be more specific in terms of Latino, African-American -- but for minorities would consist of minorities together composing 50 percent, plus one additional vote -- or one additional person. If we could get 50 percent minorities, plus one, then we would have an opportunity district that would be called a minority opportunity district, which could be further subdivided into Latino and African-American. That was our intent.

Q. And with the changes that were made with C185, does that impact your ability to leverage benefits or opportunities for the people within your district?

A. The Medical Center provides an opportunity to -- which is a part of 100, when it was constructed. The Medical Center provides an opportunity for you to interact with colleagues, to be of assistance, and to be mutually beneficial to each other. If you have the Medical Center in your district, you have the ability to work with colleagues on projects for the Medical Center and work with them on projects for other areas of concern to them. So it provides your district with additional prowess, if you will, a kind of prowess that's recognized in our political order. The 90A rail line, which has been extricated -- the Medical Center has the 90A rile line there. If you have a rail line in your district, there are other members who are working on rail lines as well. You

collaborate. You work together. And it affords you the opportunity to have additional support for what you're trying to accomplish. The plan C185 extracts the rail line, the Medical Center, the Astrodome. It leaves it as a bedroom community for the most part. And as a bedroom community, it has to be represented and will be represented, but it does not have the same prowess that it would have with the Astrodome, the Medical Center and the rail line.

Q. And finally, are there some concerns that you have in some of the growth areas or the undeveloped areas that were placed in your district?

A. Yes, sir. As we indicated, the Shadow Creek area causes consternation, because of the opportunity for additional growth, upscale development. The area south of the district, generally speaking, causes some concern. But I'm talking about Sienna Plantation. That area causes a good deal of concern because of the growth possibilities with the estates that have not been developed and with the upscale housing that exists there currently. So those are just two, but there is a possibility for the character to continue to change.

MR. BLEDSOE: Thank you. Pass the witness, Your Honor.

CROSS-EXAMINATION

BY MR. FREDERICK:

Q. Thank you, Your Honor. Good afternoon, Congressman Green.

Expert Report of Orville Vernon Burton, Ph.D. for Perez v. Perry, regarding Congressional Redistricting in Texas and the State House of Representatives.

Draft 08-06-11 8:32 pm EST

I. Scope of Project

In the late afternoon of July 20, 2011, I was contacted by NAACP attorney Robert Gary Bledsoe of Austin, with whom I had worked as an expert witness in 2003 on that round of Texas redistricting, and asked to provide consulting services with regard to the U.S. Congressional redistricting of Texas and for the Texas House of Representatives Redistricting. Specifically, Attorney Bledsoe asked that I prepare a discussion on the history of discrimination and that the Senate factors should be part of my report. He asked me to look at:

1. the extent of any history of official discrimination that touched the right of the members

of the minority group to vote;

2. the extent to which voting is racially polarized;

3.the use of unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination;

4. whether the minority has been denied access to any slating process;

5. disparities in education, employment and health;

6. whether campaigns have used overt or subtle racial appeals; and

7. the record of election of minority candidates.

Thus, in this report I investigate the Senate report factors (also known as the Zimmer factors) and consider whether the current plans for the State House of Representatives new plan regard to the 2006 Reauthorization Act: see *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 109th Cong. Volume III 3063-3090 (2006).[8]

Senate Factor 1: "the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process"

This factor looks at how the history of racial discrimination has affected voting in Texas. Native Texan and sociologist Dr. Chandler Davidson has researched and written extensively on African Americans and political rights in Texas. His expert witness report in *Vera v. Richards* is a good overview of Texas politics and race relations.[9] Texas has had a

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[8] *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 109th Cong. Volume III 3063-3090 (2006).

[9] Texas does not have registration figures by race or language minority, as I understand Chandler Davidson, "The Voting Rights of African Americans in Texas, 1865-1994." Expert Witness Report (The copy Dr. Davidson provided me is 114 pages double spaced that includes 15 pages of notes, including citations to court cases). *Vera v. Richards*, 861 F. Supp, 1304

long history of racial discrimination. Beginning with Anglo settlement, slaves were brought from other areas of the South with their masters who had acquired inexpensive land in Mexican Texas. During this time slaves were official contract labor (usually for life) in order to comply with Mexican law which outlawed outright slavery. With the fear that the Mexican government would put an end to slavery, the Anglos living in Mexico felt threatened and fomented revolution in 1836. There are many interpretations as to the causes of this insurgence, among which racist leanings towards Mexicans are often attributed as a factor. Others strongly argue that these leanings did not arrive until after revolution had broken out. Those who came to aid the Texans after the fighting broke out, it is claimed, formulated a hatred for the Mexicans they were at war against.[10]

After Texas won independence, slavery grew as an important part of the economic system of the Republic of Texas and later the State of Texas; however, it no longer needed to be disguised as contract labor. Slavery was important to cotton, and

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(S.D. Tex. 1994); *Bush v. Vera*, 116 S. Ct. 1941 (1966). Much of this testimony is included in the essay, Brishcetto, et al., "Texas." See also J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill: University of North Carolina Press, 1999), 277-316.

[10] On Anglo settlement in Mexican-Texas see: Gregg Cantrell, *Stephen F. Austin: Empresario of Texas* (New Haven: Yale University Press, 1999); On the Texas Revolution see: Cantrell, *Stephen F.* Austin; Paul D. Lack, *The Texas Revolutionary Experience: A Political and Social History* (College Station: Texas A&M University Press, 1992).

cotton was important to the economy of Texas. Slavery grew at a rapid pace and by 1860 was as important in Texas as it was proportionately in Virginia.[11]1 Free African Americans did exist in antebellum Texas, and occupied the bottom class on the free population's social ladder. One of the first pieces of business for the new Republic of Texas after winning independence was to expel all free blacks.

In the state of Texas, this group, which numbered no more than 400 in both 1850 and 1860, had no rights and were seen by whites as threats to the institution of slavery. Free African Americans had to seek permission from the legislature to remain in Texas and were subject to the same harsh laws as slaves.[12]

In defense of slavery, Texas joined the Confederacy in 1861. In the Texas Declaration of Secession, the delegates wrote that Texas had joined the United States for the "blessings of peace and liberty to her people." Their declaration averred that liberty meant "maintaining and protecting the institution known as negro slavery-- the servitude of the African to the white race within her limits-- a relation that had existed from the first settlement of her wilderness by the white race, and which her people intended should exist in all future time." Instead of protecting "the property of our citizens," they declared, Washington was now intent "to strike

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[11] Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas 1821-1865* (Baton Rouge: Louisiana State University Press, 1989).

[12] Orville Vernon Burton, *The Age of Lincoln* (New York: Hill & Wang, 2007), p. 26. Campbell, *Empire for Slavery*.

down the interests and property of the people of Texas, and her sister slave-holding States."[13] Slavery came to an end in Texas on June 19, 1865, when federal troops arrived at Galveston and announced the Emancipation Proclamation, although many kept slaves well into the fall of 1865.[14] Without federal supervision, white Texans adopted in 1866 a new constitution that prohibited "intermarriage, voting, officeholding, and jury service by freedmen." Instead, Congress proposed the 14th Amendment, which defined American citizenship: "All persons born or naturalized in the United States...are citizens" and as such are entitled to "due process" and "the equal protection of the laws." Texas was one of the nine states that refused to ratify the amendment.[15] Texas then came under military rule and eventually under what has been called "Radical" Reconstruction, although it was only "radical" if one considers fairness and interracial democracy "radical." Only with Congressional Reconstruction did African Americans get the vote; left to their own devices white Texans opposed strongly granting any rights of citizenship to former slaves. During the period of Reconstruction, African Americans gained the right to vote, the ability to serve in police forces and on juries, and some held various appointed and elected offices. Those elected

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[13] *Age of Lincoln*, p. 120; http://sunsite.utk.edu/civil-war/reasons.html

[14] Brischetto, et al., "Texas," in Chandler Davidson and Bernard Grofman. *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965 – 1990*, 237.

[15] Age of Lincoln, p. 275.

to office and the state legislature were almost always elected only from African American majority districts. Texas's experiment with interracial democracy was relatively brief. In 1872 conservative white Democrats recaptured control of the legislature and in 1873 the governorship. A former governor characterized this so called "Redemption" as "the restoration of white supremacy and Democratic rule." Another constitutional convention was held in 1875 and a bill mandated segregated schools. In 1876 Texas ratified a constitution that returned the state to conservative Democratic Party home rule and deprived African Americans of equal rights. Although some had wanted to use that constitution to disfranchise African Americans, it did not. Many whites in counties with a high proportion of blacks unsuccessfully sought to have a poll tax implemented as a provision of the constitution. At that time an Austin newspaper declared "districts were 'Gerrymandered,' the purpose being, in these elections, and properly enough, to disfranchise the blacks by indirection." Texas still operates under the anti-Reconstruction constitution adopted in 1876. Texas also had its share of segregation laws. For example, an 1891 law required segregation on railroad cars in the state.[16]

From Reconstruction through the end of the nineteenth century, African Americans in Texas

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[16] Randolph B. Campbell, *Grass Roots Reconstruction in Texas, 1865-1880* (Baton Rouge: Louisiana State University Press, 1997); Barry A Crouch, *The Freedman's Bureau and Black Texans* (Austin: University of Texas Press, 1992); Brischetto, et al., "Texas," pp. 233-34, quotations p. 234; Chandler Davidson, "Expert Testimony," *Vera*, p. 4.

participated in the political process, usually as members of the Republican Party, while conservative Democrats continued to control the state government. In the 1890s economic oppression brought African Americans and poor whites together to support Populist Party candidates, and in several Texas congressional districts progressive whites and African Americans supported the People's Party candidates. This third party had a great deal of success at the local level, but could not elect a congressman or statewide official. Many scholars have asserted that in the cases of close elections the Democrats used fraud, ballot stuffing, payments, coercion and intimidation (often aimed at African Americans) to steal the offices at stake.

Nevertheless, during this time whites and African Americans attended both political and social events together in support of Populist Politics. Brischetto, et al. quote historians who document from the 1870s the formation of white associations "the purpose of which was to prevent the elections of blacks to office." When this failed, Anglos on the local level acted just as whites in other former Confederate states resorting to the methods listed above and even, if all else failed, resorting to murder. The "terror in the Texas blackbelt" was similar to "that in the Deep South states during the time period." In addition, Dr. David Montejano's important book, ***Anglos and Mexicans In The Making of Texas, 1836-1986*** documents that the White Man's Primary Association was effectively used to prevent Mexican Americans from participating in the nomination process in Dimmit County, Texas. The 12 June 1914 *Carrizo Springs Javelin*, the local

Dimmit County newspaper reported that the White Man's Primary Association "absolutely eliminates the Mexican vote as a factor in nominating county candidates, though we graciously grant the Mexican the privilege of voting for them afterwards." One of the founders of the League of United Latin American Citizens in 1929, M. C. Gonzalez included among adverse conditions in Texas for Latinos in the decade of the 1920s, "the establishment of 'white man's' primaries to prevent blacks and Mexican Americans from exercising their right to vote." The history of race relations in Texas is one that discouraged African Americans and Latinos from participating in the political process not only subtly but with economic reprisals and the real threat of one's life.[17]

As a result of the political challenges to their own conservative rule in the 1890s, the Democratic Party sought reform in Texas politics, which meant

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[17] Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America*. (New York: Oxford University Press, 1976); Gregg Cantrell, et. al., "Texas Populists and the Failure of Biracial Politics," *Journal of Southern History*, Vol. 55, No. 4. (Nov., 1989) pp 659-692; Gregg Cantrell, *Kenneth and John B. Rayner and the Limits of Southern Dissent* (Urbana: University of Illinois Press, 1993); Gregg Cantrell and Kristopher B. Paschal, "Texas Populism at High-Tide: The Case of the Sixth Congressional District, 1894," under consideration *Southwest Historical Quarterly*; Kristopher B. Paschal, "Melvin Wade, The Dallas People's Party, and Bi-Racial Political Fellowship," under consideration *Southwest Historical Quarterly;* Alwyn Barr, *From Reconstruction to Reform: Texas Politics, 1876-1906* (Austin: University of Texas Press, 1971); Alicia Rodriquez, "Urban Populism: Challenges to Democratic Party Control in Dallas, Texas," Ph.D. diss., University of California-Santa Barbara, 1998; Brischetto, et al., "Texas," pp. 234-35.

in essence to "clean up" their opposition.[18] Around the turn of the century, White Men's unions formed in many Texas counties with their purpose to ensure that only conservative white Democrats were elected to office. Beginning in the 1890s and lasting for many decades, lynching became a standard form of racial intimidation in Texas. Between 1890 and the 1920s, Texans lynched 309 men, more than any other state. Of these, 249 were African American. In the 1920s mob violence would give way to organized violence against African Americans.[19] During the 1920s the Ku Klux Klan, no stranger to politics, gained prominence in Texas. In 1922, Earle B. Mayfield, an admitted Klan member, was elected to the United States Senate. The Klan also had success electing officials at the local level, and the Klan controlled the Democratic Party's nominating convention.[20] In 1930 a lynch mob burned down the Grayson County courthouse in Sherman to kill an African American accused of raping a white woman – and then burned down the entire African American business block in Sherman for good measure. As recent as 1998, in Jasper, Texas, the murder of

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[18] Brischetto, et al., "Texas," in Davidson and Grofman, 235, 237; David Montejano in *Anglos and Mexicans In The Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987), pp.143-45.

[19] Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford University Press, 2003).

[20] Randolph B. Campbell, Gone to Texas.

African American James Byrd was so shocking it drew worldwide attention.[21]

During the early twentieth century the number of Latinos in Texas began to rise dramatically as the Porfiriato and Mexican Revolution took place in Mexico and a wave of migrants made their way across the border. According to Benjamin H. Johnson, "At least ten thousand people moved to Cameron County from 1910 to 1920, increasing its population to 37,000. More than twice as many came to Hidalgo County, making almost two-thirds of its 1920 population of 38,000 recent immigrants." Prior to this time, Texans considered Mexican-Americans as white. As this wave competed with Anglos for jobs, however, accepting them as white quickly disappeared. "Jim Crow" laws also found their way to the Latino society in Texas. Now socially cast apart from whites, restaurants and stores in the Rio Grande valley began to display signs reading, "NO MEXICANS."[22] Segregated Latino schools and neighborhoods began to develop. In reaction to Latino segregation, the Plan de San Diego was conceived in Duval County. This plan suggested violent rebellion by Latinos who would create a separate nation from the Border States in the Southwest.[23] In 1920, the sole Latino member of the

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[21] Dina Temple-Raston, *A Death in Texas* (Henry Holt & Co., 2002).

[22] Johnson, *A Revolution in Texas*

[23] Benjamin H. Johnson, *A Revolution in Texas: How a Forgotten Rebellion and its Bloody Suppression Turned*

state legislature, J.T. Canales, who had called attention to abuses of Latinos by the celebrated Texas Rangers, left politics. It would not be until 1956 before a Latino would return to Austin politics, when Henry B. Gonzales of San Antonio was elected. Brischetto, et all, "Texas," have a brief section on "Mexican Americans" and the discrimination they received from Anglo Texans.[24] This history of discrimination has fostered a community of interest between Texas African Americans and Hispanics.

The Ku Klux Klan, which targets minorities – Hispanics as well as African Americans – remains active in Texas. A list maintained by the Anti-Defamation League (ADL) includes the Bayou Knights of the Ku Klux Klan as "prevalent in Texas" as well as in other areas of the Southwestern and Southeastern U.S. According to the Anti Defamation League, the Texas-based White Camelia Knights, another off-shoot of the KKK, has managed to maintain a strong presence to this day. Moreover, the climate of hate espoused by such groups has an influence on the people of Texas. A news release from the Anti Defamation League tells of the beating and assault of a Hispanic teen in Houston, Texas, in 2006. "The Anti-Defamation League (ADL) is shocked and appalled by the beating and sodomizing of a 16-year-old Spring boy." Investigators of the crime stated that perpetrators insulted the young

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Mexicans Into Americans (New Haven: Yale, 2003); Neil Foley, *The White Scourge: Mexicans, Blacks and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1997).

[24] Brischetto, et al., "Texas," in Davidson and Grofman, pp. 235-37

man's Mexican heritage while they beat him. Moreover, "Allegedly one of those two men wears racist tattoos and purports to be a skinhead." In a report entitled "Extremists Declare 'Open Season' on Immigrants; Hispanics Target of Incitement and Violence," ADL reported in 2006 that between 2000 and 2006, more than 2,500 hate crimes had been perpetrated against Hispanics. Moreover, the report stated that. the number of violent attacks targeting the Hispanic community is growing.[25]

The KKK remains politically influential, now with some connections to the Tea Party in Texas. Karen Peck, who leads the Wood County Tea Party (also known as the Winnsoboro Texas Tea Party), is also an "official supporter" of the KKK and has a subscription to the *White Patriot Tabloid*.[26] Mark Williams, the original Vice Chairman of Tea Party Express, writes "Some people should not vote... Sometimes the best choice for the rest of us is if some of us don't vote at all."[27] Woodlake, Texas, is the Cooperate Headquarters of the 1776 Tea Party. Its organizer Dale Robertson attended a Tea Party event in Houston, carrying a sign that read, "Congress= Slaveholder, Taxpayer= Niggar," and his email requests for fund-raising depicted President

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[25] "Extremists Declare 'Open Season' on Immigrants; Hispanics Target of Incitement and Violence," www.adl.org/PresRele/Extremism_72/4904_12.htm.

[26] Institute for Research & Education on Human Rights, Special Report, "Tea Party Nationalism," Fall 2010, p. 45.

[27] Mark Williams, Taking Back America, One Tea Party at a Time, p. 122, cited in Special Report, "Tea Party Nationalism, p. 55. The organization has disavowed Williams' extremism, but he was influential in the formation of the Tea Party.

Obama as a pimp.[28] Although these are extreme positions within the Tea Party movement, they do provide a level of cultural acceptance for racist attitudes toward African Americans. Beginning in 1902 a series of acts sought to disfranchise several groups including African Americans, Latinos, and poor whites. The major disfranchising device in Texas was the use of a poll tax as a prerequisite for voting. The institution of the poll tax aimed directly at poor African Americans but also crippled the influence of many Latinos and poor whites. Historians have maintained that the poll tax was targeted at punishing Populists who had formed coalitions with African American voters in urban areas such as Dallas. In addition to disfranchising those who had been in dissent to conservative Anglo Democratic Party rule in Texas, urban workers who may very well have identified themselves as Democrats also felt the weight of the poll tax.

Because both African Americans and Latinos were disproportionately poor, the cost of paying the poll tax helped keep minority registration and turnout low for much of the first half of the twentieth century. Dr. Chandler Davidson in his 1994 Expert Report quotes Ozzie Simmons that the poll tax, "although a small sum ($1.75), costs the [South Texas Mexican] laborer most of a day's wage, and the same is true for African American laborers."[29] The poll tax had such an effect on voter turnout that Congress and the states passed the

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[28] Special Report, "Tea Party Nationalism, p. 23.

[29] Brischetto, et. al., "Texas," 239-40; Davidson, "Expert Report," p. 12.

24th Amendment to the United States Constitution (ratified 1964), which outlawed the practice for federal elections. The Voting Rights Act of 1965 authorized the United States Attorney General to challenge use of the poll tax in state elections, and a federal court promptly struck the poll tax down as unconstitutional, in part because it had been adopted in 1902 for the purpose of disfranchising African American voters.[30]

Without a poll tax to hinder minority voters, the Texas legislature imposed a restrictive voter registration system requiring annual registration of all voters months before elections were to be held. This system, which a federal court found to have a substantial disfranchising effect, was struck down in *Beare v. Smith.*[31] The following year the state enacted a new purge law that would have required reregistration of the entire state electorate. These kinds of purges tend to eliminate minority voters off the rolls. The extension of the preclearance requirement of the Voting Rights Act to Texas in 1975, however, prompted the Department of Justice to object to implementation of the new purge law, which a federal court then enjoined. By 1975 the attempts to hinder voting in Texas had become so obvious that the United States Congress extended Section 5 of the Voting Rights Act to cover Texas.[32]

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[30] United States v. State of Texas, 252 F. Supp. 234, 245 (W.D. Tex. 1966), aff'd 384 U.S. 155 (1966).

[31] 321 F. Supp. 1100 (S.D. Tex. 1971), aff'd sub nom *Beare v. Briscoe*, 498 F.2d 244 (5th Cir. 1974).

[32] Brischetto, et al., "Texas," in Davidison and Grofman, 239-240

According to Brischetto, et al., "Texas," after extension of Section 5 to Texas, "Texas jurisdictions were soon the target of the largest number of objections in any covered state." Between 1975 and 1990, the Department of Justice "interposed 131 objections to voting procedures" embracing the full range of "illegal procedures: racial gerrymandering, discriminatory purges of registered voters, imposition of numbered posts and the majority runoff requirement, annexations that diluted minority votes, a faulty bilingual oral assistance program, reduction in the number of elected officials, transfer of duties from one official to another, and unfair changes in election dates." Texas failed to submit numerous changes for Section 5 review between 1982-2005: 29 of the 105 successful Section 5 enforcement actions were from Texas – more than from any other state [*Northwest Austin Mun. Utility Dist. Number One v. Mukasey*, 573 F. Supp. 2d 257 (D.D.C, 2008) (citing report of the National Commission on the Voting Rights Act). The court also cites several Texas vote dilution cases in which prior federal courts found intentional discrimination: *Williams v. City of Dallas*, 743 F. Supp. 1317 (N.D. Tex. 1990); *LULAC v Midland Indep. School Dist.*, 648 F. Supp. 596 (W.D. Tex. 1986); *Political Civil Voters Org. v. City of Terrell*, 565 F. Supp. 338 (N.D. Tex. 1983). Clearly, the Anglo leadership of Texas has a history of attempting to disfranchise African Americans.[33]

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[33] Brischetto, et. al., "Texas," 240, quotes from pp. 246 and256 on DOJ objections.

In addition to the poll tax, Texas also instituted a white primary. Texas began to use the white primary as a means of de facto disfranchisement after adoption of the Terrell Election laws in 1903 and 1905.[34] Given that the Democratic Party was the only party that mattered, keeping African Americans out of the primary amounted to disfranchisement. Those voting in the party primary had to affirm, "I am a white and I am a Democrat."[35] Prof. David Montejano in *Anglos and Mexicans In The Making of Texas, 1836-1986*, writes that the author of the "Terrell Election Law" which established a direct primary and required the payment of a poll tax between October and February, clearly stated that the purpose of the law was to prevent opening "the flood gates for illegal voting as one person could buy up the Mexican and Negro votes." Moreover, "Proponents of the Terrell legislation also noted that Mexicans and blacks would either fail to pay so far in advance or lose their receipts when election time came around." In 1918 African Americans successfully challenged a white primary in Waco, Texas, and gained access to voting privileges there. In response, the Texas State Legislature outlawed the participation of African Americans in Democratic primaries statewide. Dr. Montejano writes that "in 1918, the legislature passed a law eliminating the interpreter at the voting polls and stipulating, moreover, that no naturalized citizens could receive

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[34] See Table 8.9 in Brischetyo, et. al., "Texas," p. 269.

[35] Barr, *Reconstruction to Reform;* Patrick G. Williams, "Suffrage Restrictions in Post Reconstruction Texas: Urban Politics and the Specter of the Commune," *Journal of Southern History* Vol. 68, No.1 (Feb. 2000).

assistance from the election judge unless they had been citizens for twenty-one years." In 1923, the Texas legislature enacted a law declaring that "in no event shall a negro be eligible to participate in a Democratic primary election held in the State of Texas." After a 1927 successful challenge by the African American El Paso physician Dr. Lawrence A. Nixon, the legislature shifted the "burden of disfranchisement from the state to political parties." The State Democratic Executive Committee resolved to "limit primary participation to white Democrats ... and none others." Although this law was successfully challenged in the Supreme Court, the Texas Democratic Party made slight adjustments to the rule until, in *Grovey v. Townsend* (1935), it was unanimously held that if the Democratic Convention decides to exclude African Americans it was constitutionally acceptable to do so. This standard was not overturned until the landmark 1944 Supreme Court decision *Smith v Allwright* that held the "white primary" to be unconstitutional.[36]

Texas has continued to hinder minority voting with the use of vote dilution techniques. For example, since the 1960s there have been constant legal challenges to the system of election districting in Texas. It is important to note that these challenges have been closely paralleled by an increase in a surge of political activity among African Americans and Hispanic activists. Kicking

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[36] Brischetto, et. al., "Texas," in Davidson and Grofman, 237-239, quote p. 238; David Montejano in *Anglos and Mexicans In The Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987), pp.143 45; Davidson, Expert Report, *Vera*, p. 7.

off the set of legal challenges to voting districting in Texas was the *Graves v Barnes* (1972) decision that became the important *White v. Regester* (1973) decision, which

Additional Senate Factor 2: "whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."[99]

This is closely related to Senate Factors 1 and 2. In 2000 and 2001, the NAACP held hearings and gathered testimony about voter intimidation, the challenging of African Americans at the poll, the purging of African American voters from the rolls, etc. I testified to that testimony in trial in 2003. Testimony was gathered in Houston, Fort Worth, and Texarkana. In each instance witnesses testified to abuses in their attempts to register and to vote. People were very confused by the moving of so many precincts at the last moment. Several African Americans reported harassment and misinformation from white poll watchers. In at least one instance a TV station reporter covered the lack of responsiveness of Anglos at the polls to African American attempts to vote. In my report in 2003, I also cited two other examples to illustrate both the state's lack of response and state efforts at restricting voting. One, with help from the NAACP, the Texas legislature passed a bill that would post voters rights at each polling place, but then the governor vetoed it. Two, the legislature passed House Rule 54, which has been enacted into law; this

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[99] S.Rep., at 28-29, U.S.Code Cong. & Admin.News 1982, pp. 206-207.

bill makes it easier to prosecute an individual who might help someone elderly vote. In addition, Dr. Dwight Steward had been conducting studies of racial profiling and racial disparities in the Criminal Justice system; he documented different treatments of minorities (African Americans and Latinos) from Anglos. The report on racial profiling *A Statistical Examination of Racial Profiling* showed that African Americans were significantly more likely, even after taking into account all driver and traffic related factors, to be searched by police than Anglos. Dr. Chandler Davidson also has a discussion of the "Criminal Justice System" in Texas, where he documents racism inspired civil rights violations.[100]

I also noted in 2003, that in 2002, the television news show *Sixty Minutes* ran a segment on the scandalous situation in Tulia, in the Texas Panhandle, or "West Texas." On the word of an undercover law enforcement agent who *Sixty Minutes* suggested was racist, the police made massive drug arrests of innocent African Americans (and a few white girl friends). The undercover agent was presented a major award as an officer of the law. The NAACP Legal Defense Fund finally succeeded in getting all of the defendants out of jail. The "Tulia case" received a lot of attention.[101]

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[100] See for example, "NAACP Voter Intimidation Hearing – December 9, 2000, Texarkana, Texas" and "NAACP Voter Irregularity Hearing Wednesday, December 12, 2001, Shape Community Family Center Houston, Harris County, Texas." There are three separate reports of racial profiling completed by Dr. Steward; Davidson, "Expert Report," *Vera*, pp. 65-67.

[101] http://www.naacpldf.org/whatsnew/pr/2002_motions.html.

There is a sobering conclusion about modern Texas race relations and politics in *America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy* (2000). The author compares Texas to other states studied and proffers, "Most of the barriers to minority voting rights outlined in this report concern election administration – faulty technology, lack of poll worker training, shoddy voter registration practices, and a shortage of capacity to absorb a large turnout. In Texas, barriers to minority voting rights were of a different sort. They concerned instances of outright voter intimidation more reminiscent of the Jim Crow era than 21st century America. While these instances were not officially sanctioned, they serve as a chilling reminder that even now individuals will resort to violent, unscrupulous tactics to keep minorities from going to the polls." The book documents incidents in Tarrant County and Wharton County in August and October, 2000 respectively.[102] The latter incident is also documented in the Sworn Testimony of C. G. Walywn, who was the African American candidate for sheriff in Wharton County, Texas, at the Voter Intimidation Hearing, Palmer Center Business and Technology Center, Houston, Texas, Dec. 19, 2000, pp.33-56.

No better place illustrates additional Senate Factor 2 and also closely-related Senate Factors 1 and 2 than Waller County, home to Prairie View

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[102] Steven Donziger, principal author, *America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy* (Nov. 7, 2001 by Advancement Project, 1730 M Street, N.W., Suite 401, Washington, DC 20036 202-728-9557), pp. 24-26.

A&M, a historically black college that is affiliated with the predominately white college, Texas A&M. When I wrote my report in 2003 and testified in 2003, documented incidents showed Waller County attempting to prevent black students from voting in elections. Indeed, for at least forty years, Waller County has consistently tried to prevent African American Prairie View A&M students from voting in local elections. In a fairly recent case, *Prairie View Chapter of NAACP v. Kitzman; Prairie View Chapter of NAACP v. Waller County, Texas*,[103] the Houston Division of the Texas district courts established the following facts in a settlement agreement for that case.

1) District Attorney Kitzman wrote a letter published in the *Waller Times* expressing a willingness to prosecute people for "illegal voting" on the grounds of "improper domicile" if one did not meet his particular definition of domicile;

2) PVAMU students are the only group in Waller County who Kitzman specifically refers to as not meeting his definition of domicile;

3) PVAMU students attend a historically black university, and understood the letter to mean that the District Attorney would prosecute them if they were to exercise their right to vote.

In researching for this report, I learned that there has been an even more recent case involving Waller County. A Department of Justice complaint

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[103] *U.S. District Court, Southern District of Texas, Houston Div., No. H-04-459; U.S. District Court, Southern District of Texas, Houston Div., No. H-04-0591.*

against Waller County is on the DOJ website.[104] This case, *United States v. Waller County, TX (S.D. Tex. 2008)*, involved officials in Waller County, Texas, who implemented questionable practices that discouraged voting. Waller County implemented its new voting practices without first obtaining Section 5 preclearance as mandated by the Voting Rights Act. These practices included:

a) Rejecting voter registrations because of missing a zip code on a registration form or failure to use the most recent voting registration form.

b) Limiting the amount of registrations that may be turned in to the county by a single voting registration deputy (who is usually a student at PVAMU).

c) Requiring that the registration deputies (the PVAMU students performing voting drives) personally notify those who failed to fill out their forms correctly.

d) Not notifying applicants that their application had been forwarded to a different county.

According to the consent decree issued in October 2008, these practices were legally unenforceable because Waller County had not yet submitted the proper paperwork themselves to obtain pre-clearance from the US government.[105]

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[104] http://www.justice.gov/crt/about/vot/sec_5/waller_comp.php

[105] *The United States of America v Waller County, Texas*, Consent Decree, Oct 17th 2008, p. 3. http://www.justice.gov/crt/about/vot/sec_5/waller_comp.php

Work at the precinct level has a major impact on a citizen's right to vote. Turned away there, or not helped with questions of where to go and how to handle the voting mechanisms, means the right to vote is jeopardized. During the election of November 2010, Precinct 204 in Killeen, Texas, caused deliberate procedural problems for African American and Hispanic voters. The clerks were rude and sometimes simply got up from the table and walked away from voters. Problems at this precinct include causing trouble for soldiers who tried to vote. Although it is possible that some confusion might arise for election judges when soldiers are on leave and want to vote in person rather than the standard operating procedure of soldiers who are away from home sending in an absentee ballot, soldiers in this precinct were consistently turned away and denied the right to vote.[106]

I have been told of other incidents, and I plan to investigate these allegations at a later date. One such incident was in Dallas County, where NAACP National Board Members, Bob and Linda Lydia, were confronted and racially insulted by Tea Party persons outside a health reform Town Hall. The second is similar. An African American woman was racially insulted outside a John Carter Town Hall. This incident made the Temple newspaper with a photograph.

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[106] Interview with Phyllis L. Jones, Democratic Election Judge in Killeen, Texas, August 5, 2011 and an email exchange. Jones is also the Texas State Conference NAACP Education Chair & Central Texas Area Coordinator.

EXERPTS FROM TRIAL TESTIMONY OF SYLVIA GONZALES

JUDGE GARCIA: Okay. Let's proceed.

MR. NOTZON: Robert Notzon for the NAACP calls Ms. Sylvia Gonzalez who has just been sworn.

SYLVIA GONZALEZ, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NOTZON:

Q. Ms. Gonzalez, please state your name for the record.

A. Sylvia Louise Gonzalez.

Q. And are you native Texan?

A. Yes, I'm a native Texas, born and raised in Houston, Texas.

Q. Okay. And I know my mom said I shouldn't do this, plus my wife said I shouldn't do this, but I've already cleared it with you. How old are you?

A. I'm proud to be 67 years old and a half.

Q. Okay. And could you tell the Court kind of a short version of your history of representation of the Latino community in Houston and parts beyond through your work with LULAC?

A. Okay. I have been involved with the community for the past 43 years. I started getting active when I was 23 years old. My first -- my first campaign that I worked on was George W. Bush, the father, senior. I call him Daddy Bush because we still see each other every now and then. And I worked for the party program. I went to school part-time until I graduated and then I became a probation officer. I have worked with many Hispanic and black organizations, the black ministers, the Black Heritage Society, the Martin Luther King parade, Texas Women Empowerment, National Black Lawyers Association. I worked with Congress – Sheila Jackson-Lee for the past 12, 15 years on a lot of community efforts as well as Al Green and Gene Green.

Q. And what offices have you held with LULAC both locally and nationally?

A. On a national basis I'm the immediate past national VP of the southwest which covers five states. I gave that up due to -- my health has been deteriorating. I was a past national sergeant at arms and parliamentarian.

Q. And local offices. What local --

A. Local offices. I was the district director for District 18 and I'm now the deputy district director for District 18. And I was the state treasurer for LULAC.

Q. And could you tell the Court --

A. And I'm one of the founders of the Hispanic Women in Leadership, which has been in existence 23 years.

Q. So if somebody was to say that you don't speak with authority for the Latino community in Houston would they be speaking accurately?

A. That I don't or do?

Q. If somebody said that you don't would they be accurate in their assessment that you don't speak for the -- with knowledge of the Latino community in Harris County?

A. No, that would be inaccurate.

Q. Could you tell the Court about your -- in more detail specific examples of the coalition work that you've done with the African-American Community and also with Sheila Jackson-Lee.

A. Okay. In the black community we have been working together for numerous years since I can recall back in the -- you know, about 45 years ago in terms of criminal justice, which is one of the biggest areas of concentration that we work together with. The lack of transparency in some of these police departments, lack of access to help, concern over immigration issues. We've been working on that diligently back and forth in the black community to let them know what our position is. The Voting Rights Act, unemployment. It seems to be our minorities are always affected, black and Hispanics. Board of Education programs. We've been fighting

with the state education board about our books not being there, about our history for Hispanics and black are not in there. And basically as a minority community we're tired of being diced and sliced like a tomato.

Q. And in this testimony you said things weren't being there for the Latino and African-American community. Are you saying that in comparison to the Anglo communities' access to these resources?

A. Exactly. And we all want a piece of the pie. It seems like everything is one-sided and not divided among all of us, you know. And the Asian community is rising too. They're very active. We also work with them. I also work with the Jewish community. And we all try to work together as a coalition, a group. Houston United, another group I belong to, it's got coalitions from the Asian, from the Muslims, from the black, from the Hispanic, all the communities together.

Q. Could you now go into and tell the Court about your work in coalitions with kind of electoral issues and choosing the candidate that you would like to back and being successful or not in your coalition with the African-American --

A. I have never --

Q. -- community in Houston?

A. I'm sorry. I have never been a party person. I vote for the person. You know, I'm not too big into Democrats, Republicans. I vote for the person that's

running. Like I said before, my very first campaign was the first President Bush. I worked on his campaign. I worked on Perry's first campaign. And then I didn't after that. Judge Ed -- Judge Ed Emmett, who is a Republican, he's over all of Harris County. He's a good friend of mine and I worked on his campaign and still do. So, you know, we've had some bad experiences. Like an October march. A group of students, when we were trying to pass this DREAM Act, we went to Kay Bailey Hutchison's office at the federal building downtown. We had a demonstration outside with nothing but students and some community activists. We went out there and what does she do? She throws us out of her office, has security, -- you know, to me that was an insult having -- being -- a retired law enforcement person on the line. She threw us out of her office and had us escorted by the security down there. And who comes to the rescue? Sheila Jackson-Lee comes to the rescue. She goes and takes us up to the office, her staff, and tries to negotiate a call to Kay Bailey Hutchison's office, but what Ms. Hutchison's office did is they locked the door at 3:00 o'clock and they weren't taking phone calls and they weren't answering the door. These were kind of some of the scenarios that we have gone through. At least Senator John Cornyn was a little more informative, more talkative. He did let us in on another occasion and did talk to us at length.

Q. Let me ask you a specific question.

A. Uh-huh.

Q. Do you have any examples for the Court where you're aware that the Latino and African-American communities came together to elect candidates of their choice in Harris County?

A. Yes. The mayor, the Harris County sheriff. And the previous mayor before -- at least two of the mayors before Annise Parker we helped -- we worked together and helped get elected. And of course we also demonstrated our concerns. Like we had -- we had a choice for the first time in history about a couple of years ago. And we told the black community -- I said, look, it's time for us to have our first Hispanic police chief. And we already knew the mayor's recommendation. He was Chief McClelland. He's a black American. They said, okay, we'll work with you. Let's see what results. We respected that. She went ahead and nominated McClelland. We got bypassed again, but we honored that and we have worked with the black community in all aspects.

Q. Okay. And if you could give just a couple of examples of working with Sheila Jackson-Lee's office for the Latino community in Houston.

A. You know, there's no comparison. To me I look at Sheila Jackson-Lee as a super woman, not only because of that incident. A couple of times we had two soldiers that were Hispanic soldiers that were overseas. The families came to us and said, "Look, Ms. Gonzalez, they're going to deport. They sent a letter of deportation. He's out there serving in Iraq." And another one was somewhere else. And I said, "Okay. Let's see what we can do." And I called a

couple of the Congresspersons. The only one that came to the rescue, Sheila Jackson-Lee.

Q. And these families of these two soldiers, were they in Sheila Jackson-Lee's district?

A. No, they're not. One was in Jim Green and the other one was -- I forgot whose district it was.

Q. And one more example of working with Ms. Sheila Jackson-Lee?

A. Another one on the Eli Escobar case that was notorious. That was a police officer that shot this young man that was 13 years old. Shot him point blank to the head. Of course, we got involved with that immediately. Sheila Jackson contacted me and said, "Sylvia, I want to go see the family." I said, "Okay. We'll make arrangements." And so we went and she brought a big basket of food. She didn't have to do that but she wanted to. That was not even in her area. But this was a big -- what do you call it -- a test case, a historical case that happened in Houston because of the results of the process, you know. And there's been others. She's helped us out with the Head Start program way back and tried to get all these minority contractors -- we've been fighting with Metro, which is one of the biggest transit systems in Houston. A lot of our minorities were not getting the contracts so we worked together on that. A couple of times we even got thrown out of the union in her -- because we were all there, you know, expressing our --

Q. The last issue. Could you tell the Court about your perspective on whether or not Latino voters in Houston deserve to have an opportunity district for themselves in the Houston area?

A. By all means. We deserve that and much more. You know,

we're tired of being left out on all aspects and we think it's time, you know.

MR. NOTZON: Pass the witness.

JUDGE SMITH: You don't consider Gene Green's district a Latino opportunity district?

THE WITNESS: Yes.

Q. By MR. NOTZON) So do you tell the Court that you deserve another?

A. We deserve another. He does good. He's been real good to the Latino community. Of course, we all would like to have our own representative and somebody that understands the culture, somebody that understands our plight, our fight and all the stuff that we're going through.

Q. Is that because you think Sheila Jackson-Lee, being a responsive member of Congress to the Latino community beyond her district, needs help?

A. She goes over and beyond her help. Just like when we had Hurricane Ike, that was not even her district. This is 97 percent Hispanic population. We couldn't get any water out there. We were all

volunteering out there trying to get the people to get us some water. She shows up with a truck full of bottled water to help out.

MR. NOTZON: Pass the witness.

MR. SCHENCK: No questions.

JUDGE GARCIA: Okay. Thank you, Ms. Gonzalez. Have a safe trip back to Houston.

OFFER OF PROOF: SWORN STATEMENT OF ANTHONY EMANUEL BOND

I, ANTHONY EMANUEL BOND, declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

1. My name is Anthony Emanuel Bond.

2. I live at 4109 West Northgate Drive, # 821, Irving, TX 75062.

3. I am an African-American.

4. I have lived Irving since 1988.

5. I am certified in the medical technology field. I work as a private contractor.

6. I founded the Irving branch of NAACP in 1994, and I served as the president of the branch from 1994 until 2000.

7. I am the chairman of Irving Education Coalition, a group formed in 1995 and comprised of teachers and community members of all races. The Irving Education Coalition recently signed a Memorandum of Understanding with the Irving Independent School District and the United States Department of Justice. That MOU covered 5 subjects: making sure that sure that the ISD hired enough minority teachers, counselors and administrators hired by district; ensuring adequate curriculum and training of teachers; encouraging parental involvement; making sure that the ISD applied proper and equal discipline for children of color when compared white children; and developing a Minority and Women Owned Business Policy.

Every coalition representative signed the MOU. This was truly a multi-ethnic coalition, including Hispanics, Asians, and Blacks.

8. Irving is 41% Hispanic, 12% African-American, and 14% Asian-American. In this last census, the Asian population surpassed African American for first time

9. Of the kids attending school in the Irving ISD, 68% are Hispanic, 12 % are African-American, and 12% are Asian-American. The ISD has an all-White school board.

10. In most recent election for District 4 of the 2010 Dallas County Commissioners, I spearheaded the campaign of Dr. Elba Garcia, a Latina candidate. Dr. Garcia defeated an 16-year incumbent Anglo, Ken Mayfield. Dr. Garcia defeated Mr. Mayfield to become first Hispanic to get elected to Dallas County Commissioners Court. As a campaign consultant for Dr. Garcia, I worked with black pastors, Hispanic churches, Muslim mosques, the North Texas Indian Association, Hindu groups, the Association of Taxi Cabs Operators and other groups in Irving to get Dr. Garcia elected. I believe that this diverse group of minority voters all supported Dr. Garcia and voted for her, and that she would not have won without that coalition support.

11. Minority turnout in these kinds of elections in Dallas is usually low, but in Dr. Garcia's race, it was twice what it usually is. District 4 is 26.4% Anglo, 15.7% Black, 49.3% Latino, and 7% Asian-American.

12. Dr. Garcia faced an Anglo competitor in the Democratic primary election. Her name was Rose,

but she called herself Rosita. We went to the Attorney General to see if this was allowable. Dr. Garcia was able to win the primary, though, despite this.

13. The general election for Dallas Commission District 4 was very close. Her opponent made a big deal about Dr. Garcia's accent. Dr. Garcia is Mexican-American. There was an article in the Dallas Morning News about the issue of her accent in the election.

14. As a former President of the Irving Branch and current member in the Dallas branch of the NAACP, I know that the NAACP works with other ethnic groups, including the Hispanic Chamber of Commerce, the Black Pastors Coalition, the Islamic Center of Irving, the Baps Organization, the North Texas Indian Association and others in the Dallas area. I have witnessed these groups working together for years to get on single-member districts for the Irving city council. These groups just succeeded and got single-member districts in the Irving City Council in 2010 as a result of a lawsuit.

15. Tea Party folks in Irving recently campaigned against bilingual education. I, along with black pastors and Hispanic pastors, Accion America (a large civil rights organization), the NAACP, LULAC and others went to school board meetings to tell the board not to eliminate bilingual education. We were successful in our efforts.

16. The city of Irving one of only cities that has Criminal Alien Removal Program (CAP), which is a replacement for 287(g). 287(g) deputizes police to act as ICE agents. When you go to Irving Jail, jailers

have permission to question you on your immigration status. The program, started in 2009, allows jailers to call customs about prisoners they have questioned. The African-American community is opposed to this program.

Dated: September 14, 2011.

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Anthony Emanuel Bond

OFFER OF PROOF SWORN STATEMENT OF JUANITA WALLACE

I, JUANITA WALLACE, declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

1. My name is Juanita Wallace.

2. I live at 1409 South Lamar Street, Loft 341, Dallas, TX 75215.

3. I have lived in Dallas since August of 1985. I previously lived in Ohio.

4. I am an African-American.

5. I am a registered voter.

6. I am the president of the Dallas Branch of the NAACP and have held that role for the last three years. Previously, I have served as the second Vice President and the first Vice President of the Dallas Branch of the NAACP. My involvement with the NAACP goes all the way back to when I lived in Ohio.

7. Under my leadership, the NAACP Branch in Dallas has worked with Latino groups in Dallas on a number of issues. In the last couple of years, there have been two notable deadly police shootings. In one of those shootings, an African-American was killed. In the other, a Latino was killed. The NAACP worked to bring a large number of community groups together, including LULAC, to form a group called the Concerned Citizens for Good Law Enforcement. The mission of this group was to be proactive about law enforcement and police

shootings. Our group drafted an executive statement and took it to the chief of police. We held meetings throughout the city, and invited black and brown residents of the city. We had the police chief come to talk to the community about these law enforcement issues.

8. In my experience, African-American and Latino voters work well together and vote together. Recently, Dr. Elba Garcia, a Latina woman, was elected as a Dallas County Commissioner from District 4. It required the coordinated effort of Blacks and Browns to get her elected. NAACP members worked hard in supporting her. We even took a course to become deputy registrars so that we could make sure that everyone got registered for the election.

9. Additionally, when it comes to voting, African-American and Latino groups work well to coordinate with each other. For example, in the 2009 election for Dallas school board members, I was running for school board, as was a Latina woman named Beatrice Martinez. We were running from different districts. The NAACP and LULAC got together and organized joint political forums so that community folks could come listen to what both of us, as candidates, had to say.

10. I am a retired school administrator. I retired in 2007. I taught for 11 years in Ohio and was involved in education for 22 years in Texas. I taught for my first 3 years in Texas, and was then promoted to an administrator. I received my B.S. from Central State University in Ohio, a historical black

university. I received by doctorate in philosophy of education in 2003 from Madison University.

11. Based on my many years of experience in education, I can say that the education cuts made in the last Texas state legislative session will have a huge negative and disproportionate effect on Black and Brown students in the state.

12. Adequate money for funding education is critical to the success of minority students. Without adequately funded education, too many students will end up dropping out.

Dated: September 14, 2011

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Juanita Wallace

Excerpts from the Trial Testimony of Howard Jefferson

Rice Hotel in the room President Kennedy was in when he stayed there.

Q. Now, the -- in your position with the NAACP, can you tell

the Court if problems with race discrimination have continued well past the initial application of the Voting Rights Act to Texas?

A. Well, yes, discrimination has occurred in a lot of ways, more in voter discrimination, economic development and those areas. I like to point out that in many of these cases there were things happen that could have been avoided there, a lot of discrimination, at the polls and which I would always visit. I have seen people behind the polls say, no, you can't vote. Now, maybe their name was not there. I don't know. But I've heard them say, well, where do I go? I'm supposed to go here? I don't know. I don't know, but you can't vote here. And not tell them where to go.I had -- we had hearings, the NAACP had hearings on voter intimidation. And the people will come in there and they'd testify. I was a member of those panels. And they would testify in those panels that people outside would stop them and say, if you go vote up there, have you paid your child support, or do you have a ticket? And many of those questions was asked that would stop the people from voting up there.

Q. Okay. And these are within the last ten years, are they not?

A. Yes, sir.

Q. Okay. And do you recall any of the reports that we received from Bell County relating to intimidation of African-American voters this last election?

A. Well, I remember something about that, but I don't remember the particulars about that case.

Q. Okay. But suffice it to say that we have election day strike forces, and we continue to get complaints in reference to irregularities on election day?

A. Yes. Let me mention a couple of other ones. Not only did we have problems with being able to vote at the polls. There in Houston, Texas, there was a case where they moved a lot of their precincts. So the NAACP went down to talk to the county clerk about moving, and sat there. She was very courteous. And we asked her, how many polls have been moved? She said, not -- just a few. She said, just a few. I said, well, minorities at least don't know about this. She said, well, we put it in the Chronicle. Well, a lot of us don't read the Chronicle. How long ago did you put it in there? How many polls were being moved? And we were told it's just a few. I insisted that I want to see the list. I have a right to see the list. And when I saw the list, it was a whole lot. Hundreds of polls had been moved, and people didn't know about those there. So that was a problem there.

Q. Now, I want to talk to you about the NAACP report card.

Q. Congressman Rodriguez received an A; is that correct?

A. Correct.

Q. So are those examples of Latino congresspersons effectively supporting the agenda of the NAACP?

A. Yes, sir.

Q. Okay. Now, you've had personal experience, have you not, in working coalitions with Latinos in the Houston community?

A. Yes. Yes, I've had quite a bit of experience in working with Latinos there. Let me say, not only in Houston, but in the state. About eight or ten years ago we went to Laredo and signed a memorandum of understanding with LULAC, the NAACP. And we agreed there that we may not be together all the time, but we have more in common than we have not in common, education, health, discrimination. So we signed that memorandum of understanding with the state. In the Houston area a coalition, Black Brown Coalition was formed by four entities, really. Congressman Al Green that just testified here was a JP then, and Judge Rodriguez was a JP. They formed the Black Brown Coalition, along with members of LULAC and the NAACP. When the JPs, minority JPs in Houston, Harris County were making -- salary was less than their counterpart, John Mata, who was president of LULAC, and

myself, who was president of NAACP, went to meet with County Judge Bob Eckels. And we said, this is not right. We want to change that. So we * * *

Excerpts from the Trial Testimony of Dr. Morgan Kousser

283 is more compact than some of the other plans under some definitions of compactness but certainly not across the board. And in general it's less compact than the previous plan. That could not have been a reason either.

Q. Okay. Doctor, thank you. Looking at some of the things you looked at for examining intentional discrimination, did you find inconsistent applications of standards or other indications of intent?

A. Yes, sir. One of the things that I did was to look at the House and Senate debates on redistricting plans and they are very informative. They show evidence and certainly charges of inconsistencies in the application of principles and plans. And they are apparent. Those inconsistencies are apparent from the shape of the districts. They are apparent from the populations of the districts. So the evidence on both an objective sense and both an objective sense and from the legislative discussions goes -- says that they are -- there were inconsistencies in the way that districtings were worked out.

Q. Okay. And in your report you point to examples of those sorts of -- of items in the debates and you point to certain of the maps that are consistent with -- with the question of intent. So in an analysis of an intent is the shape of the district important?

A. It's quite important. One of the things that I did that came out of the Garza case and which is in a

chapter of "Colorblind Injustice" is to look at a series of factors which historians and courts have used to try to determine the intent of framers of particular laws. And in redistricting cases in particular one of the things that they have looked at is the shape of the districts, most famously in Shaw versus Reno, but in lots of other cases they have looked at the shape of the districts to try to determine intent. And it's commonsensical. That's what a lot of people have -- historians have done before even judges started doing it.

Q. And as an example of that --

MR. GARZA: If we could turn now to page 95 of the report and look at figure eight that's on page 19.96, Robert. The one before that, 19.96.

A. Okay. This is district 41 in the state house that I said we would get back to. I think it was described on the floor of the House as a transformer district. Somebody has kids. It's a district that immediately attracts your eye and you say to yourself what does this mean, why did they do it this way. MR. GARZA: And if we could turn to the next page, Robert.

Q. (BY MR. GARZA) I'm not sure we'll be able to see it clearly, but what do you -- what are you showing then with --

A. Well, this does a couple of things. One, it superimposes -- I guess it's Anglo population on the district so that the -- the areas which have a large proportion of Anglos are the darker areas here. It also shows the precincts and probably you would have to look at this really blown up, but if you look

at voter -- if you look at the way that the lines are drawn they cut voter districts quite considerably. I think there are 14 VDT cuts in this particular district alone which is more than the total number of cuts in the whole state for the state senate which is 10 or 12.

Q. So just within one district they've managed to cut more voting precincts than in the entire senate plan?

A. That's correct.

Q. And what is that an indicator of, Dr. Kousser?

A. Well, obviously something is going on. And if you look at the pattern of population you see what is going on.

Q. So if we turn to the next page, page 19.98.

A. This is even harder for those people in the audience to see but here we go. The dots are I think 20 people of Anglo orientation, Anglo demography and for each dot. So if you look at the district it captures just about all of the heavily Anglo areas that it possibly could. This is in a county that is quite heavily Latino. That's good. You can see that the shapes are tracking -- trying to capture as many Anglos as they possibly can. And it's apparent simply by looking at the -- at the patterns of demography versus the patterns of the lines on the map that something was going on and this tells you what was going on. They're trying to increase the Anglo percentage in this district.

MR. GARZA: If we could now turn to page 101 of the report that's figure nine at 19.02, Robert.

A. Okay. This is a district -- this is a House district in Tarrant County. Is it district 90? Anyway, again that's a telltale shape. You look at the district and you say why does this finger cut out of the district. What is it straddling? I don't have a particular name for the district, but the shape is again suspect.

Q. (BY MR. GARZA) And there are a number of examples that you give in your report like this one. If we could go to the next -- the next page, 102.

A. This is the Latinos who were drawn into the district. You can see that all of the darker portions of this district are heavily Latino. And if you look at the way that it is patterned the lines go very carefully to avoid non-Latino areas and to capture as many Latinos as possible. So it's the opposite of district 41 which was drawn to capture as many Anglos as possible, this is drawn to capture as many Latinos as possible.

Q. So like I say, there are a couple of other examples, Dr. Kousser, but we'll move on. Based on all of the analysis that you've done with regard to the House district that was adopted by the state of Texas, 283, have you reached a conclusion regarding its compliance with one person/one vote?

A. I have. It is not very compliant with one person/one vote. And the population disparities are clearly correlated with partisanship and ethnicity. Latinos are disportionately disadvantaged --

JUDGE GARCIA: Yes, sir.

MR. SCHENCK: Your Honor, I'm fine with the witness giving his opinion but I want to be clear I'm

going to object to this as a legal opinion ultimately, the compliance with one person/one vote.

JUDGE GARCIA: Mr. Garza. Any response?

MR. GARZA: Well, I mean, I think he prefaced his statement at the very beginning that he was doing a social science analysis of this.

JUDGE GARCIA: Okay. He's already offered that opinion so you can go to the next question then.

MR. GARZA: Certainly, Your Honor. And what I'm trying to get at now, Your Honor, is just a summary of his conclusions and I'll be done with this area.

JUDGE GARCIA: Okay.

Q. (BY MR. GARZA) So you found that the plan's deviations were not justified and they more heavily burdened Latinos; is that correct?

A. That's correct.

Q. All right. With regard to your analysis of minority voter cohesion first as to the Latino population your finding was --

A. That they were cohesive.

OFFER OF PROOF: SWORN STATEMENT OF PHYLLIS L. JONES

I, PHYLLIS L. JONES, declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

1. My name is Phyllis L. Jones.

2. I live at 2401 Bluebonnet Drive, Killeen, TX 76549.

3. I am African-American.

4. I am a registered voter.

5. I have lived in Killeen for 17 years.

6. I am a special needs behavior tech.

7. I am a member of the Killeen Branch of the NAACP. I am a past president of the Branch from 2009 through 2011. I am currently the NAACP state education chair and the Central Texas Area Coordinator for the NAACP. I am also a member of LULAC.

8. I live in Bell County. Part of Fort Hood is in Bell County.

9. We currently do not have African-American representation in the state legislature.

10. Election irregularities are still happening in Bell County. I have served as an election judge for the last 6 years. I became an election judge because when I first moved here, I noticed that despite significant minority population, all the election judges and clerks were Anglo.

11. I recently reported to the County Commission an Anglo election clerk that I believed was acting inappropriately. He would leave the desk whenever a Latino voter would come in to vote. He would make disparaging comments to African-American voters, especially during the presidential election of 2008, implying that he already knew for whom they were voting. If an Asian voter came in, he would ask for additional identification. When voters would be putting their ballot into the machine to be counted, he would ask to check to see how they voted. When I reported him to the County Commissioners, they would just instruct him to take election clerk training again.

12. Latinos will support African-American candidates in Bell County. For example, Ernest Wilkerson, an African-American, ran for the Bell County Commission from District 4. He was very supported by the Latinos in that district. He lost because despite being predominantly African-American, District 4 had very low turnout that election. But this was not from lack of support from the Latino community. Mr. Wilkerson had Latino campaign workers, and the Latino community held fundraisers for him.

13. Another example of Latinos supporting a Black candidate was the mayor's race in 2010. Timothy Hancock, an African-American candidate, was in a race with 4 Anglo candidates and won. He was only able to win with the votes of Hispanic and Asian voters. He had Hispanic and Asian-American community members working on his campaign.

14. Likewise, African-Americans in Bell County will support a Latino candidate, as was the case with Juan Rivera. Mr. Rivera ran for the Killeen City Council from Precinct 3 in 2011, and he won. I supported him, as did many African-American members in our community.

15. Bell County is very diverse. Most of the Asian-American population in Killeen is Korean, and in my experience, they will support Black candidates. For example, I attended a candidate forum hosted by the local Korean community group, Four Winds, in 2008. When I attended this meeting, there was widespread acknowledgement that the Korean attendees supported and intended to vote for Barack Obama.

16. As the NAACP state education chair, I am very familiar with education cuts made by the state legislature in the last session. In the last session, our schools, the Killeen Independent School District, lost 16 million dollars. The Dallas ISD lost 30 million dollars. All districts lost between 8 and 50 million dollars of their budget. Starting in January, school districts will be allowed to furlough teachers for up to one week at a time.

17. Education cuts will disproportionately affect black and brown students. A state program called Communities in Schools had its state funding cut by more than half in this last session. Communities in Schools is a program that helps Title I schools with after-school mentoring, after-school food, and after-school tutoring. The program has been in place for 10 years. Some areas in the state might not even

have Communities in Schools now. The lack of funding for this program will hurt minority students.

Dated: September 14, 2011

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Phyllis L. Jones

DECLARATION OF PROFESSOR J. MORGAN KOUSSER

I, J. Morgan Kousser, under penalty of perjury, do declare: I have been retained by the plaintiffs in this action to analyze racially polarized voting in recent Texas elections, the extent of compliance of the redistricting plan for the Texas House of Representatives with the "one person, one vote" principle and the possible reasons for deviations from the equal population standard; and the impact of the plans for the Texas House and Congress on minority voters. The summary below sets out my conclusions in their briefest form, and the rest of this report explains them in more detail and provides extensive evidence for them

I. Summary

1. First, using the statistical methods conventionally employed in voting rights cases to determine racially polarized voting, I find that voting has been markedly racially polarized in recent general and Democratic primary elections in Texas, and that Latino voters in the state overwhelmingly choose to vote for Democratic candidates, even when Republicans nominate candidates with Spanish surnames. In general elections, African-Americans almost unanimously support Democratic candidates, regardless of whether Republicans nominate Anglos or Latinos. A majority of Asian-Americans supported Latino Democratic statewide candidates in the 2010 general election. Second, I find that the extensive population disparities in the redistricting plan for the State House of Representatives (H.B. 150) tend to disadvantage Latinos and have no other plausible

explanations except partisanship, which is difficult to separate from ethnicity in Texas. Third, I find that despite the massive growth of the Latino population in Texas, which was largely responsible for the addition of four congressional seats to the state, the largest population growth of any state in the country, the number of minority opportunity districts in the adopted plans did not increase, and probably decreased, compared to the previous apportionment plan. Fourth, evidence from maps of both State House and congressional districts, as well as the patterns of the racial composition of districts and remarks during legislative debates makes clear an intent to discriminate against minorities during redistricting. Fifth, the existence of polarized voting and of alternative plans to those adopted that are more or equally compact and that offer minorities many more opportunities to elect candidates of their choice demonstrates that a challenge under Section 2 of the Voting Rights Act at least passes the threshold "*Gingles* factors."

75. From the 1960s through the nationally-noticed mid-decade redistricting circus of 2003, Texas redistricting has been repeatedly litigated, and those lawsuits have always centered on racial and ethnic issues: whether at-large elections for the state legislature and city councils discriminated against African-Americans and Latinos, whether the particular lines drawn did, whether there were unconstitutional racial gerrymanders in favor of or against racial minorities. Again and again, Texas redistricting has produced major U.S. Supreme Court decisions: *White v. Regester*, *Bush v. Vera*, *LULAC v. Perry*. Each of these decisions and more,

as well as numerous books and chapters, have charted the history of discrimination in Texas, as well as the specific history of racial discrimination in redistricting. For instance, in his opinion of the court in *LULAC*, Justice Kennedy noted that "State legislators changed District 23 specifically because they worried that Latinos would vote Bonilla out of office."[86] As Tables 12-14, above, show, the Spanish-surnamed Republican, Canseco, who barely won in time for this decade's redistricting, was no more the choice of Latino voters than Bonilla had been in 2002. As Rep. Harvey Hildebrand, a rural Republican, noted during the House debate, SB 4 altered the 23rd District from one in which John McCain won 48% of the votes in 2008 to one in which his vote total would have been 52%.[87] Kennedy and the majority of the Court overturned the earlier redefined District 23 as a violation of Section 2 of the Voting Rights Act, and he did not accept the 2003 legislature's effort to substitute a majority-Latino district that ran from Austin 300 miles south to McAllen, a barbell district with a large majority of the population concentrated in population bulbs at each end of the district, connected by a narrow strip, as a substitute. The current legislature has tried a close variation on * * *

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[86] *LULAC v. Perry*, slip opinion at 22.

[87] *House Journal*, Special Session, at S42.

Excerpts from the Trial Testimony of Rogene Calvert

* * * that come, and the staff must also be diverse.

Q. The -- when you refer to diverse staff and diverse patients, the Court's already heard that the -- the minority population in that area is somewhere in the 75 percent or so range. Is that accurate?

A. That's true.

Q. And has that minority population, Asian, African-American and Latino, been able to form a coalition such that they have, in fact, elected the candidate of their choice for the last –since 2004 I believe?

A. Yes. At the state level definitely we have been able to do that. Also, in city elections we've been able to elect the candidates of our choice and the school board elections.

Q. And did during the -- on behalf of the Texas Asian-American Redistricting Initiative, did you testify before legislative committees and make known to the legislature the coalition that we've just been describing and its ability to elect candidates of its choice with the Asian population participating actively?

A. Absolutely. That was the core -- the crux of my testimony, that the Asian-American community in that area particularly has been very concentrated and has demonstrated its political strength through the election of these candidates of their choice, and that we didn't want the new redistricting efforts to divide or to dilute the concentration.

OFFER OF PROOF: SWORN STATEMENT OF FEDERICO "LICO" REYES

I, Federico "Lico" Reyes, declare under penalty of perjury that I have been called to testify truthfully based upon my knowledge live in the above-captioned action, I would have testified truthfully and correctly based upon my personal knowledge as follows:

1. My name is Federico "LICO" Reyes
2. My address is 716 South Deerfield Circle, Arlington, TX 76015
3. I am currently a Court Interpreter, ACTOR/DJ/Comedian, United Steel Workers Representative
4. My former job history is: FIRST Portable Party DJ in the USA, circa 1963. I was a former civil engineer in training for the Texas Highway Department, 1970-79. I was a former Computer Programmer Analyst for LTV Corporation, building what is now known as the Internet, and I also worked on the Space Shuttle. Technology and Robotics, 1980-84. For further information about my history, please visit :http://licoreyes.com
5. My position in LULAC and Civil Rights

   (a) LULAC TX District XXI Director

   (b) I am the Former State Co-Chair and National Civil Rights Commission Member

   (c) I am the author of www.civilrights survivalkit.freehomepage.com which is now the last chapter of the LULAC Civil Rights Manual. Found in www.LULAC.org at http://lufac.org/assets/pdfs/lulacmanual.pdf

(d) I have been awarded the LULAC National Aztec Award for Civil Rights 2001 as well as the National LULAC Civil Rights Man of 2001.

6. History of Discrimination up to today that I am familiar with –

(a) I have been falsely accused of being an escaped convicted murderer and made to get fully naked by Arlington PD in 1982. Arlington settled out of court for $750.00, expunged my arrest record (only time I have ever been in jail) and letter of apology. I had not been allowed to show my Secret Security Card from LTV Corp.

(b) I had just finished investigating and handling over to EEOC and US Dept. of Labor a case of 30 wrongfully treated, threatened, injured and insulted Latino/a office cleaning employees at DFW International Airport employer UBM.

7. I had a candidacy for Congress – was the top number of votes of any challenger to the incumbent for US House in 2004, District 26. I had received 1,100 more votes than the next closest challenger, Hon. Martin Prost, which can be found at http://en.wikipedia.org/wiki/Lico_Reyes.

8. I founded a movement which can be found at www.waterparty.freehomepage.com which was created to aid the Democratic Party.

9. I had African-American support for my Congressional campaign. Being a civil rights investigator and activist got me a strong support of the African American community.

10. I received African-American and Latino cooperation on campaigns and the need for them to cooperate so that hostile Anglos (who have large numbers) do not defeat them when running for office – This statement speaks for itself. Together we have over 50% of the power and votes. Separate and fighting each other we merely get crumbs off the cake.
11. African-American and Latino cooperation on civil rights matters
    (a) I facilitated the Memorandum of Agreement meeting between TX LULAC and TX NAACP at the LULAC State Convention in 1999 in Laredo, TX.
    (b) I formed the 1st diverse LULAC Council in the USA, LULAC International; our founding president was an African-American woman. At my bidding www.LULACinternational.freehomepage.com
    (c) I was invited to be Keynote Speaker at the Greenville NAACP awards banquet and was given an award plaque for Civil Rights by the board.
12. Voter Irregularities that I am aware of –
    (a) In 2004 I successfully forced the state of TX to use the physical prescence of language interpreters at the polling places. By getting the US DOJ Voting Section and other Agencies to monitor the voting polls with hundreds of inspections, thus complying with the Voting Rights Act of 1965.
    (b) In 2000 forced the City of Arlington to have education on the "Johnson Creek" election to have that education and voting information in

Spanish. Thus complying with the Voting Rights Act of 1965.

13. I was instrumental in acquiring the first $85,000,000.00 for the Texas Dropout problem: see http://civilrightssurvivalkit.freehomepage.com/rich_text_3.html

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Federico "LICO" Reyes

Excerpts from the Trial Testimony of Lemuel Price

* * * doesn't like 295, chairman Turner is okay with his district.

JUDGE GARCIA: Okay. Anything else over here?

MR. BLEDSOE: Mr. Price.

THE CLERK: Would you please raise your right hand.

(The oath was administered)

THE COURT: .

Witness , GOVERNMENT'S WITNESS, SWORN
DIRECT EXAMINATION

BY MR. BLEDSOE:

Q. I'm always the lucky guy at the end of the day. I don't know why that is.

Mr. Price, will you please state your name for the Court, please?

A. My name is Lemuel price.

Q. And are you -- you're employed at the Texas legislature.

A. Yes, I am I work for state representative Yvonne Davis.

Q. And how many years have you been employed over the legislature.

A. Over 20 years.

Q. And in that 20-year process, have you become accomplished at drawing maps?

A. Somewhat.

Q. In fact, the matter we discussed a lot in this litigation, the congressional map that created the new district for Congressman Al Green, are you the one that actually drew that map up for us, aren't you?

A. Yes. That map was drawn when I was employed by state representative Jesse Jones during the 2000 redistricting process and the map was eventually filed with the Court by NAACP and also, of course, by black Democrats.

Q. You drew that up as an opportunity district, did you not?

A. Correct.

Q. The -- and now there's a Texas legislature black caucus and there are 17 members; is that correct?

A. Correct.

Q. And how many of those members serve districts where African-Americans in coalition with other minorities are able to elect the candidate of choice.

A. 15 of the 17.

Q. Okay. And is it a bipartisan coalition?

A. Yes.

Q. Okay. And there are two Republicans; is that correct?

A. Correct.

Q. Okay. Now, we're going to get into the substantive 202 very quickly, but was there

bipartisan support for 202 when it was tendered for a vote?

A. Yes.

Q. Okay. And so how many Republicans do you recall that actually support 202?

A. Three.

Q. Okay. Now, you've worked a lot with the Mexican American legs stiff caucus have you not.

A. During the process we tried to, yes.

Q. Okay. And, in fact, did your working with them influence you in some ways in terms of how you actually ended up drawing the map, 202?

A. In drawing 202, we used I believe public plan H111. In drawing the Valley, Bexar County El Paso County.

Q. Okay. So if there was not a fifth district for Latinos in El Paso County, that came from that map, from 111?

A. Yes.

Q. Okay.

A. And those sections can be -- can be inserted from another map. It would not disrupt the rest of the map.

Q. Okay. Now, I think the -- there's large support for 295 and 1297. Those are maps that we largely support and the differences are three, maybe four counties, so I'm going to visit with you in some ways about those four counties and have you to talk about why those districts in the counties that you drew up

are preferrable, but before then I just want to briefly to ask you about what standards you used in drawing H202.

A. In drawing H202 we used traditional redistricting practices. We followed the redistricting guidelines set forth by the state and we also fold federal law. We tried to make sure that the districts that we drew were compact and continuous. We also tried to make sure that pressing in the judiciary, in the map. We also tried to limit the disruption of community of interests and tried to keep the cities intact and also tried to limit the number of counties as well as precincts or VTDs that were split. In fact, our map there is a total of 149 precincts that they are split compared to the state map of I think 422.

Q. The -- in your map, H202, the number of African-American opportunity districts was what was the number of African-American opportunity districts?

A. STWD.

A. There's 13 so the bench districts and the possibility of additional 203 -- two or three districts.

Q. Okay. And there were -- was it 37 Latino opportunity districts?

A. Correct.

Q. And were there nine combined minority districts?

A. Correct.

Q. Okay. So it was a total of 59 districts.

A. Correct.

Q. And if we take a look, I think, in the -- in Beaumont we have Joe Gustail and I think we're

okay with how I think his district was treated in 297, correct, I think they follow the same path that you did.

A. For the most part, yes.

Q. Yeah. And in 26, in Fort Bend, you did create another opportunity district there; is that correct?

A. Actually that district already existed. It was -- it's currently held by Charlie Howard. That district before redistricting process had a considerable Asian or other population as well as other minorities. The district needed to be -- to lose population so we pretty much just kept the community of interest in tact because of the natural I guess natural growth in the area, you will see that the over all minority population increased.

Q. Okay. And you -- when you prepared these districts, did you look at them to see if they were affected by looking at political data, to see if the minority community of choice --candidate of choice would be able to prevail.

A. For the entire map, yes.

Q. And in reference to Fort Bend County, there's a member of the caucus, Is that correct, who actually represents a portion of Fort Bend County?

A. Correct.

Q. And is that Ron Reynolds?

A. Correct.

Q. And can you tell me what you did in reference to his district that would be different from the other plans or the state's plan?

A. His district needed to lose population and we pretty much capped the kept the core district intact, was able to maintain his district because of the increase growth in Fort Bend.

Q. Now, I think one of the -- one of the concerns I think with his district was I think it was -- it was a district that under your plan it became an African-American opportunity district, whereas in others it might be more of an opportunity district for minorities in general, you had a higher percentage of African-Americans, in other words, in your plan?

A. Yes, yes.

Q. And how much more? Do you recalled how much more in your proposed plan for representative Reynolds district did you have then?

A. I don't recall, but I believe it's several one or two percentage points, if that much.

Q. Okay. And if we -- and representative dukes represents district 46. And her district is one that is African-American and Latino combined coalition district; is that correct?

A. Correct.

Q. But she's been able to serve in that district, of course, for some?

A. Correct.

Q. She has 26.5 in her current District of African-Americans.

A. Correct. And actual terms of CVAP it's 28.6 CVAP.

Q. And did you do anything different with her district?

A. No. Her district was over-- slight slid over the deviation. So the core of the district pretty much remained intact.

Q. And in reference to the Bexar County, did you take MALC's proposal for Ruth Jones McChen Don, another member of the black caucus, did you take their recommendation for her district?

A. Yes, it retained the coalition district that she currently represents.

Q. Okay. In Bell County you did create an African-American opportunity district or a coalition opportunity district; is that correct. And that's 454.

A. Right. District 54. In fact, district 54 and district 55 needed, had excess population. There's a community of interest that is throng border of the county. We kept that intact. You notice that some of the, I guess the southern boundary of the district was kind of jagged and some of that was done to try to keep the city as a whole in that district.

Q. Okay. And when you add the African-American voting age population with the Latino citizen voting age population there, you actually come up with a majority minority coalition district, do you not?

A. Correct. It becomes out to be about 55.3.

Q. Okay. And did you look to see if that was a district that was actually trending to become more minority?

A. Yes, it is.

Q. Okay. So that would be a district that if the Court decided adopt, you feel that minority would be able to elect their candidate of choice in that district.

A. Yes.

Q. If we take a look at Dallas County, and I know this is a county you're very familiar with. And you created a new opportunity district in this county, did you not?

A. Yes, district 107.

Q. And where is that on the map?

A. It's located in the northeastern portion of the map.

Q. Okay. And could you describe how and why you created 107?

A. There was a fragmented I guess community of interest that was fragmented by the current district lines that we added them together, there was sufficient population that exist there, the district as you can see is compact and we looked at the district performance and it does allow for the coalition -- coalition of that district to elect the preferred candidate of

choice.

Q. The -- now, 107 what are the configurations for that district? Do you recall, do you have the breakdown?

A. The population.

Q. Yes?

A. Yes, just a second. The district is total minority 74.4, has a 21.2 percent African-American population with a 21C VAP. I mean, sorry 21 percent African-American. The Hispanic is 54 with and the CVAP in that district for the Hispanic population would be 30 -- 23.9. And if you look at the Asian C VAP it's 4.8.

Q. All right. Now, I believe that both -- both 295 and 297 also create similar districts that are -- that are separate districts they not.

A. Dallas County is the same in both plans.

Q. Okay. The -- but I think there's smnchts repeat the question. I'm sorry.

Q. Well, they created a new opportunity district in Dallas County.

A. Correct. It's district is limited towards the west of that district.

Q. In Dallas County I think there are some differences that the caucus might have in terms of some -- how some of the seats are drawn that are African-American opportunity seats; is that correct?

A. Correct.

Q. And the -- does the caucus feel that the seats that are drawn by the caucus for the purpose of the African-American opportunity seats would be -- would be better than the seats that are in 295 and 297?

A. As currently drawn, yes.

Q. Okay. And the -- if the Court is concerned about, let's say that the other plans may have less deviation

or have a better compactness score, but I think we have good compactness score, but what would your suggestion be to the Court if there was a need to change deviation in reference to any of those districts? Would you think they should keep the configuration of the districts currently as they are and adjust from there or what would you recommend?

A. As currently drawn up, I would say yes. I would keep them as they are drawn in plan 202.

Q. Now, let me give you the pointer. And so you can point to the areas that you desire and you can press the little red thing. Okay. The first district I guess in Dallas. Is that 100 with Eric Johnson?

A. Yes.

Q. Okay. And how you drew that plan, could you con last to how the other plans did 100 and why your plan should be accepted?

A. This is 100 retains the core of the district, I guess the traditional core of the district there was an amendment that we offered on the House floor that did increase the voting age population, African-Americans up to 40.3. Most of that was some very small splits, change was between district 100 and district 108 and district 101. We did not affect the Hispanic district.

Q. So in terms of just 100, how does the 100 from the caucus plan compare to like H297 or the H283?

A. I'll have to see those two maps again because I don't remember in terms of where the changes were. So I'll have to see those again. I'm sorry.

Q. Okay. Well, let's look at 107. And, no 109 and that's Ms. Diddings.

A. Correct.

Q. Okay. And could you tell the Court what changes you would like to see -- or why you would like your proposed drafting of 109 adopted and what concerns that you had with the drafting of 109, for example, in 297?

A. District 109 extends in plan 297 and I'm not sure if this is working here. The pointer, I mean.

A. I can fry without it.

Q. Yeah?

A. 297 district 109 does extend into the bottom half of Grand Prairie. And it -- and this portion right here is removed out of district 109, given to district 110. And there's some other changes around this slots around this area that is taken out of 109 and given to 110.

Q. Okay. And the voters that were taken out, were they 80 percent or so African-American or was it a large percentage of African-Americans taken out?

A. That was taken out, yes.

Q. Huh?

A. Yes.

Q. Okay. And that district was almost a correct size to begin with; is that correct?

A. The district had to lose, I believe, close to scene or 8,000 individuals or voters, population, I'm sorry.

Q. And the way that you drew it, did you keep mainly the voters that were already there in how you drafted?

A. Yes, pretty much what we did in terms of the change, this portion right here, which is Wimberley and Hudson was in district 109, removed those two precincts and put into 110 to have that district which was underpopulated.

Q. Okay. So that was obviously a sensible move and that's something that representative Diddings agrees with.

A. Correct.

Q. And in terms of 110, that -- who's in 110?

A. Representative Carla Carway.

Q. Okay. And then and I think were there some other problems with -- were there problems with how the state drew Ms. Car way's district and also in 297?

A. Marc in terms of the state, I believe it extended up into this area right here and did increase slightly the Hispanic population of the district. But it was -- it still is an African-American district.

Q. Okay. And I think was her -- was Ms. Car way's precinct removed that they kept the several blocks or of that precinct or in her district or was he precinct actually removed if you recall from her district?

A. I think if I remember correctly, this portion right here was removed from her district, but her precinct is along this area over here and it's in the -- it's in her district.

Q. And what about 297, do you recall on that?

A. 297 creates a corridor that brings district 104, this part right here over into please, and grove which is right here. And doing so it goes, the corridor used is Ms. Car way's precinct. But she still lives in their plan -- she is in district 110, however, good majority of her voting precinct where she we sides is not.

Q. But the 110 you drew is very similar to the one in H100.

A. I'm sorry?

Q. H100 is the benchmark plan?

A. Yes.

Q. Okay. And so you followed the contours out of H100 in drafting.

A. Correct. Correct.

Q. Okay. The -- in 111 is representative Davis; is that correct?

A. Correct.

Q. Okay. And did you do some things with that district to help out representative Alonzo?

A. Yes. District 111 there was -- it was deviation, we removed around 3,000 voters around this corridor to put it into 104.

Q. Okay. And was representative Callia was he short in needing voters?

A. That's representative Alonzo in 104. He was short.

Q. Okay. The -- and what other ways did you draw 111 that they're significant that would indicate why the Court should adopt the 111 you?

A. That was the only change we made in 111 in our plan was this removing about 3,000 voters around this area right here.

Q. Okay. So other than that 111 is essentially the very same district as what it was before?

A. Correct.

Q. Okay. So obvious it will be very little cost in adopting this 111 since it's basically the same.

A. Correct.

Q. Now, were there any other in Dallas County that are important to note here that you drew which there might be concerns?

A. 106 was a -- considered a growth district. We had to remove population out of 106 to add into 103 and 104. To bring those into deviation. But it was enough areas where we could retain the district as well as try to limit any further disruption with the community of interests and try to keep as much as the City of Grand Prairie on this side in Dallas County intact.

Q. And Tarrant County I think you did -- you did -- your plan does provide for another opportunity district for African-Americans; is that correct?

A. Correct.

Q. And the plan number for the new district would be -- is it 114?

A. Yes.

Q. Okay. I think we look at 114, please. Just 114 on the map, if you might. Right there. There we go. Thank you. Okay. Could you describe 114 for the Court and why it naturally provides for the creation of a district?

A. Because of the I guess the minority growth in Tarrant County the community of interest, especially with the City of Grand Prairie in Tarrant County, we kept that intact which explains why districts extend so far north as instead of going somewhere over here. The reason for that was to keep at least in Tarrant County the City of Grand Prairie intact and then the rest of this population right here is from the City of Harleton I believe. This is a minority coalition district in which the African-American voters in that district will control the primary and will be the preferred candidate of choice in the general election.

Q. And what are the numbers for that district demographically, voting age population.

A. The district this is the CVAP is Hispanic 20.9, African-Americans 25.7, along with the Asian brings it to 53.8.

Q. And how did you -- and also, I think you have a different variation of district 95 for representative Visay is that correct also in Tarrant County.

A. Yes.

Q. Could you explain to the Court how you drew that district and why you drew it the way that you did?

A. The district 95 needed additional population. We tried to maintain the existing boundary or the community of interest in the district which we did.

And was able -- and again, because of the growth in the county was able to keep the district intact as well as a compact district.

Q. Okay. And if we could focus on Harris County and I know that I think there was a concern district 142, representative Dunton about cashmere gardens being cut from his district or split.

A. That's my understanding, yes.

Q. Okay. You have any other concerns with 142, or was that your primary concern?

A. The only other concern that was expressed by a member was I believe also district 141 by representative Thompson, her concern was pretty much the need to add additional population, new population tooler district in which she needed lose population.

Q. I think that representative Thompson had 17,500 over; is that correct?

A. Correct.

Q. And she ended up getting 40,000 new people in her district and 29p I guess; is that correct?

A. Yes.

Q. Okay. But now the district that you drew for her, could you tell us if you -- how you drew her district and why it is a better way to draw her district.

A. Essentially we kept the core of the district. We did move the district up a little bit north to allow for population on -- at the bottom to move into 142 and ripple effect down to have the other minority district towards the bottom which needed population.

Q. Okay. The -- in terms of -- so that was the only other concern that you recall out of that County.

A. Yes.

Q. Okay. And, of course, representative Diddings, I think was paired in Dallas County, representative Anderson, but I think as Mr. Gray indicated that Mr. Anderson may not run for re-election. But that's not a certainty.

A. Correct.

Q. Okay. Now, in reference to the numbers, the -- of the --of the black caucus, could you tell the Court if you also did things in your plan that were supportive of Mr. White, one of the Republican members of the caucus, that you were able to address some concerns that he had.

A. We tried to keep his current district intact. Which we did and obviously we need to make changes in the area, which we did. But he was pleased with the district.

Q. Now, what other concerns are you aware of that the any of the members of the caucus have with H283, the state map other than the fact that it did not create new opportunity districts.

A. The Elimination of district 149 as well as district, I believe, 137, which are coalition district performing coalition district. In fact, district 149 was within the deviation, slightly over the deviation but I'm sorry slight lit over --now the district there was really no need to disrupt that district.

Q. Okay. Were 149, was that representative Vo and representative Hochberg?

A. Correct. Representative Vo is district 149. District 37 is Hochberg?

Q. Okay. And in your experience in the long time that you've been at the legislature, were those two individuals who voted frequently in support of issues that were advanced by the legislative black caucus?

A. As well as MALC, yes.

Q. Okay. And so was it harmful to both MALC and the legislative black caucus from your observation that have their districts eliminated?

A. Only to those two caucuses, but also to the community in the area.

Q. Okay. Now, one of the things you try to do, did you not, was to try to keep communities of interest together; is that correct?

A. Correct.

Q. Okay. And the communities of interest in the African-American districts that you were trying to keep together, could you describe what they are and how they form a community of interest?

A. In terms of minority as a whole, they are in addition to the voting patterns, there's cultural similarities, there's also economics and social similarities than in the Anglo community.

Q. Okay. And have you seen there's been general support in the Latinos and Asian representatives work effectively with the black caucus on issues relating to their communities at the legislature?

A. Yes.

Q. Okay. So do you think it is important for this Court to consider coalition districts that might consider a combination of any of those three combined with each other?

A. Yes.

MR. BLEDSOE: Okay. Thank you pass the witness.

JUDGE GARCIA: Any other counselor on the side.

MR. GARZA: No questions, Your Honor.

OFFER OF PROOF: SWORN STATEMENT OF JEFFREY WILLIAM TRAVILLION, SR.

I, JEFFREY WILLIAM TRAVILLION, SR., declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

1. My name is Jeffrey William Travillion, Sr.
2. I live at 20802 Derby Day Avenue, Pflugerville, TX 78660.
3. Pflugerville is in Travis County. I have lived in Pflugerville for 15 years, and I have lived in the Austin area since 1986.
4. I am an African-American.
5. I am a registered voter.
6. I am a member of the Austin Branch of the NAACP. I was president of the Branch from 1990 to 1997. I am currently a member of the NAACP state executive committee.
7. I am a board member of the Austin Projects, a program designed to help build capacity for low- to moderate-income students in Austin school districts.
8. I am a member of the AFSCME labor union, and I do work with LULAC.
9. I believe the peculiarly-shaped Congressional District 35 serves to disenfranchise Black voters in the Austin area. There was a time when Austin was in one congressional district. The African-American population makes up over 20% of the population in Travis County, but with the new congressional plan, we make up less than 10% in every district we are divided up into. This takes that sizable community and reduces its voice.

10. The largest contiguous group of African-Americans in Travis County is from I-130 and over to I-35, toward the city of Austin. This large, contiguous group is now divided into 3 congressional districts, and maybe even 4.
11. This plan minimizes, dilutes and effectively disenfranchises African-American voters. Now we do not form a large enough percentage to impact any of the congressional districts into which we are divided.
12. I know from person experience why this matters. Right now, I live in Rep. Mark McCall's district. The core of that district is in Williamson County. Those of us in Travis County who are in his district do not have as much access to him compared to the folks in Williamson County.
13. Being paired with areas in San Antonio is bad for Black voters in Austin. Our interests are different than those of voters in San Antonio. Transportation issues in the cities are different. Austin suffers from a lack of affordable housing. The average home price in Austin is $182,000. Housing in San Antonio is more affordable. The means of San Antonio communities are different, as are programs, employers and histories in the cities. The experience of those living in Austin is fundamentally different from the experience of those living in San Antonio. We need to be represented by different people.
14. Travis County is not a perfect place. There are still huge disparities between African-Americans and Anglos in home and business

ownership, and in economic and educational attainment. Only the bare minimum is being done to address these disparities. We need to be represented by someone focused on fixing these problems in Travis County.

15. As a member of the NAACP state executive committee and as the father of three children, I am very familiar with what recent funding cuts to education will mean for black children who want to attend college.
16. The state's education cuts this last session have been devastating to low-income and minority populations in the Austin area. Title I school programing that has gone away. These cutes have had a disproportionate impact on low- and moderate-income students, and vast majority of those students are African-American and Hispanic.
17. Texas Grants, which provides college grants to low-income kid performing well in high school, was cut by $55 Million (about 10%) this year. Large number of kids will now not be able to go to college. For a lot kids, if they are not in the top 10% of their class or an elite athlete, college could be effectively precluded for them. Also, cuts to Texas Equal Opportunity Grants take away an additional source of funding that will make it more difficult for kids to go to and stay in school. A lot of these kids will be children of color.

Dated: September 14, 2011

_____

Jeffrey William Travillion, Sr.

EXCERPTS FROM ORAL DEPOSITION OF DAWNNA DUKES

ORAL DEPOSITION OF DAWNNA DUKES, produced as a witness at the instance of the Defendants, was duly sworn, was taken in the above-styled and numbered cause on SEPTEMBER 24, 2011, from 9:16 a.m. to 10:36 a.m., before Chris Carpenter, CSR, in and for the State of Texas, reported by machine shorthand, at the 1st Floor Conference Room of the Price Daniel Building, 209 West 14th Street, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto. correct?

A. If that's what it adds up to.

Q. Okay. All right. Now, turning back to your declaration, Exhibit 1.

MR. BLEDSOE: Is there not going to be anyone at the door?

MS. JORDAN: No.

MR. BLEDSOE: So if Dr. Burton comes by...

MR. HICKS: Can we go off the record for a second?

(Brief discussion off the record.)

Q. (By Ms. Jordan) Now, according to your statement on Page 2, you believe that the process with respect to passing the congressional redistricting plan was not fair; is that correct?

A. As it relates to the operation of the Texas House and how we handle the process of bills and their layout and the input from citizens and members and

the time to review, in comparison, I do not believe this was fair.

Q. Okay. You -- you believe that you were not given an opportunity to provide input into the congressional plan; is that correct?

MR. BLEDSOE: Object to the form of the

question. Argumentative. Assumes facts not in evidence. Mischaracterizes the testimony. Go ahead and answer.

A. What question am I answering?

MR. BLEDSOE: I'm sorry about that.

Q. (By Ms. Jordan) Okay. If you look at your statement, I think it's on Page 2, which is Page 33 of 43 looking at the top.

A. Uh-huh.

Q. Actually it's on Page 1, the first page. And you state, "In reference to the congressional redistricting, there was no input requested from the members of the Travis County delegation or at least the members from East Austin."

A. Correct.

Q. Now, do you agree that there were interim hearings that occurred prior to the legislative session beginning, that covered the redistricting process?

MR. BLEDSOE: Object to the form of the question. Confusing. There's no understanding what "interim" means.

Q. (By Ms. Jordan) Do you understand what "interim" means?

A. Do you mean prior to the appointment of the Appropriations Committee by the standing House speaker?

Q. I mean before the legislative session started --

A. Yes.

Q. -- were there hearings held regarding redistricting in various areas throughout the state?

A. Typically when a hearing is held on a measure, the actual measure is placed before the committee and before the citizens to know exactly what they're testifying for or against or on. There was never a map presented to the people of Texas, or to the members of the committee. So in my opinion and the opinion of many members, the hearings during the interim were immaterial because it did not have a concrete measure before it that anyone could testify for, against or on.

Q. Well, according to your statement, one of the -- one of the complaints was that Travis County is not -- does not -- does not have a congressional district that is anchored in Travis County; is that correct? Did I understand your statement to say that correctly?

A. Travis County?

Q. Yes. I believe --

A. Are you speaking in reference to my statement that Travis County has roughly 1.2 million constituents and should have an anchor congressional district because an average

congressional district is 698,000; thus, we have more than enough in constituents to comprise a congressional district?

Q. Right. And that statement appears on Page 33 of 43, and that's what it says. It says, according to this statement, Exhibit 1, you're saying Travis County should have an anchor congressional district?

A. Travis County is the only urban county in the state of Texas, that does not have at least one anchor congressional member as a result of the congressional map adopted by the legislature.

Q. But on -- in the benchmark plan, Travis County did not have a congressional district anchored there, correct?

MR. BLEDSOE: Objection, assumes facts not in evidence.

Q. (By Ms. Jordan) Am I wrong about that?

A. Yes.

Q. So Travis County did have an anchor in the benchmark plan?

A. Yes.

Q. Okay. In what district?

A. I don't remember -- 25.

Q. 25. And it's your testimony that under the enacted plan, there is no anchor in Travis County?

A. Under the enacted plan, the only thing exists is the middle of a spoke of a wheel, but no anchor.

Q. Okay, let me take a break. I need to get off the record.

(Recess taken from 10:10 to 10:13 A.M.)

Q. (By Ms. Jordan) So I think that you did answer my question, which was originally, you know, whether or not you were in the room when these conversations were being had between the members and the House redistricting staff and I think the answer to that question is no. Am I right about that?

A. In the actual room, I was not in that room. But I can tell you unequivocally that throughout the entire session, throughout every meeting that the black caucus had, every opportunity that I had to speak with Sylvester Turner concerning his district because he and I served on Appropriations Committee together and spend so many hours together, there was not a single time that he did not illustrate his frustration or communicate his frustration that he did not have any idea of what was being drawn into the map. He specifically stated in multiple meetings prior to the bill coming to the floor, and even on the day the bill was on the floor, that no one had spoken to him; no one gave him an opportunity. He even said such issues from the back microphone, and during the time, the meeting between Garnet Coleman and Beverly

Woolley that took place in the back hallway in the back office, you can look at the video and you can see, roughly at the 11th ticker, me standing at the desk of Sylvester Turner and talking and he was not aware that there was a meeting taking place concerning redrawing of Harris County.

Q. Well, Representative Turner did testify at the trial, so we have his testimony about what he knew and didn't know. But I just wanted to make sure I

understood that, you know, where you were during this process and --

A. We talk; members talk on the floor. It's an average thing that is done constantly of discussions, because we are there and we spend so many hours together. We commiserate. Sometimes we tell each other off; it's between us. But we know a lot about what's going on. We always communicate with one another, especially those who have closer relationships.

Q. And you said that you were a member of the appropriations committee?

A. Yes.

Q. And that's a very powerful committee within the legislature, isn't it?

A. Not so much now.

Q. But traditionally it has been? election is -- is really determined in the Republican primary. So the more heavily Pflugerville African-American boxes and north central Hispanic boxes have not had an opportunity to participate in the process, and there has been a constant diminishing of turnout and voter apathy as a result of not having the opportunity to elect the individual of choice. In CD-21, look at the central boxes, the Hispanic boxes, definitely they're such a minority, that they're minuscule to the process.

Q. Okay. Now, the -- you did actually, you know, I think you've indicated some of the difficulty that13 you've experienced in reference to having input into the congressional plan. At some point, you did

actually offer an alternative on the floor, did you not?

A. Yes, I did.

Q. Okay. And was that alternative, one that would have kept Travis County whole?

A. Yes, it would have.

Q. Okay. And is it one that would have provided that African Americans in Austin could elect the candidate of their choice in a district?

A. It would have allowed African Americans, yes.

Q. Okay. And in reference to Congressman Doggett's district, are African Americans and Latinos part of the essential coalition in order to get him elected?

A. Indeed.

Q. Okay. So if he didn't have the African-American and Latino votes, could he get elected in his current district?

MS. JORDAN: Objection, calls for speculation.

A. If we look at one of the last times that he was challenged, he was successful as a result of the turnout in the African-American and Hispanic boxes in Travis County, that he was able to succeed.

Q. (By Mr. Bledsoe) Yes. And you even testified about the coalition in Travis County that helps get him elected to -- to the House -- House committee about this tri-ethnic coalition that is working in that -- to help get Doggett elected; is that correct?

A. To which committee?

Q. The House committee in the interim, did you actually testify yourself?

A. I don't believe so. During the interim?

Q. Okay. Or what about the districting committee during the session, did you ever –

A. During the session, yes.

Q. Okay. And you talked about the tri-ethnic coalition?

A. Yes, I did.

Q. And it is a tri-ethnic coalition that led to Doggett getting elected?

A. Yes, it is.

Q. And so, you ever heard of the term "influence district"?

A. Yes.

Q. Okay. Would you characterize the district of Congressman Doggett as a district where African Americans and Latinos have influence?

A. Undoubtedly.

MS. JORDAN: Objection, form.

Q. (By Mr. Bledsoe) Okay. And could you characterize for the court what you mean by influence? Does he respond to their needs in terms of his representation in the Congress?

A. I think -- yes. I can give you an example. Congressman Doggett has been so well-recognized and liked by the African-American community that he and I were riding in a Juneteenth parade, and it was heavily my district, heavily African-American

population, and as we were traveling down East 11th Street in this parade, my constituents kept screaming, "Lloyd, Lloyd, Congressman Doggett!" And it almost made we want to Representative Vo's district should be eliminated"?

A. No. And you can even -- you can watch the floor debate in the video. It specifically is Garnet Coleman and he's talking about his district. Beverly

Woolley specifically asks him a question about the African-American percentages in his district and whether his district is a coalition district and could he assure her that it was a coalition district that could elect an African American. It was specific only to Garnet Coleman's district, and that is on -- and you can look at the floor debate and it is on there at about the 11:30 hash mark.

Q. And in reference to Representative Turner, is it -- do you recall whether or not he had amendments that he actually put on the floor this last day where he was trying to change the map?

A. Representative Turner did offer a statewide map that was -- was referred to as the Texas legislative black caucus map that we felt was more favorable to African Americans and Hispanics being able to elect individuals of their choice.

Q. Okay.

A. That created more districts, gave another seat to Harris County and to Dallas County.

Q. And so that included Hubert Vo's seat, did it not?

A. Yes, it did. The big part of the arguments had been that Harris County, if it was apportioned based

on a benchmark of roughly 168,000 constituents per district, that it would average to 24.41 members, and the last three redistricting cycles over the past 30 years, Harris County has always -- that number has always been rounded up. This redistricting cycle, that number was rounded down and they ended up not picking up an additional member, even though they had, I believe, close to over a half million in growth in Hispanic population.

Q. Now, what observations and interactions did you have on that last day of the session?

A. That session or the bill?

Q. Oh, that the bill was adopted, excuse me, of the day the bill was adopted 27th or 28th of April, that would support or that would support the proposition that the Harris County delegation and Representative Turner both were involved in the changes in Harris County that affected both his district and Hubert Vo's district?

A. I'm sorry, I can't follow that dissertation question.

Q. In terms of your observations and interactions on the last day --

A. Uh-huh.

Q. -- could you tell us whether or not those observations support the idea that they were involved in those changes and that they, the Democratic delegation including Representative Turner, supported those changes that related to his district and to Vo's district?

MS. JORDAN: Objection, vague.

Q. (By Mr. Bledsoe) Go ahead. I'm just asking you: Were your observations consistent with Representative Turner being supportive of the changes to his district on the last day of the session?

A. My observations were that Representative – not only my observations, my conversations with

Representative Turner were that he was not supportive of the changes made to his district in the plan that Representative Solomons presented and the House ultimately adopted. There were not -- there were changes that Representative Turner presented in a statewide map and in other maps presented by the Mexican American legislative caucus or Trey Martinez Fischer and by Roberto Alonzo that were more favorable to Representative Turner's district in a way. But from the plan that was adopted, my conversations with Representative Turner that night and his public statements at the microphone were clear that he was not involved and that he was not pleased with the way it was drawn.

Q. Now, the proposal that he was making in reference to his district, were they to strengthen his district in a voting rights perspective?

A. The plan that he had presented would have, as it relates to a voting rights change in his district, it would have more closely mapped the historical geographics of his district than the one that was adopted by the House.

Q. Okay. And finally, in reference to Vo, can you tell us your observations and interactions with Representative Turner in the last day of the session

and since that indicate whether or not he was supportive of the changes to Hubert Vo's district?

A. It's clear that Representative Turner was not supportive of the changes made to Hubert Vo's district in the map adopted by the House and that is clear by just going back and looking at the Texas legislative black caucus map that Representative Turner presented on the House floor. If he had supported eliminating Vo, he would have placed that in the Texas legislative black caucus's map that was offered on the floor.

MR. BLEDSOE: Thank you. Pass the witness.

Excerpts from the Trial Testimony of Representative Sylvester Turner

* * * going to look at an exhibit in binder 10. It's marked Exhibit 7. This exhibit has been marked and admitted as Plaintiff's Exhibit 607.

MR. MATTAX: Do we have a binder 10?

MS. RIGGS: You can use mine.

MR. MATTAX: Thank you.

BY MS. RIGGS:

Q. Sir, can you tell me what Exhibit 7 is?

A. I believe this is the voter ID bill, Senate Bill 14.

MR. MATTAX: Object to questions on this. I'm not sure what the relevance is to the redistricting trial.

JUDGE GARCIA: I'm sorry. I didn't hear your question. What's your question?

MS. RIGGS: Oh, I asked him to identify what it was.

JUDGE GARCIA: Exhibit 7? Okay.

MR. MATTAX: And my objection, Your Honor, is that I don't think the voter ID bill is before the Court in this case about redistricting. So I just object to the line of questioning.

JUDGE GARCIA: Overruled. Let's go.

BY MS. RIGGS:

Q. Can you briefly describe the nature of debate on this bill?

A. There was a lot of tension centered around voter ID. There always has been when we've dealt with voter ID. The concern that the impact that it would

have on those going to vote, particularly as it relates to minorities. And there was a great deal of debate on this bill, as there was in the previous session.

Q. Did the Legislative Black Caucus and the Mexican-American Legislative Caucus work together on this issue?

A. Yes, we did. We met several times on voter ID.

Q. And did you oppose this bill?

A. Yes, we did.

Q. And did this bill pass?

A. Yes, it did.

Q. Okay. Could you turn now to Exhibit 30? This exhibit has been marked as admitted as Plaintiff's Exhibit 630.

A. Yes.

Q. Could you tell me what this is, sir?

A. This is Senate -- this is House Bill 54, the early voting absentee bill.

Q. Can you briefly describe the nature of the debates on this bill?

A. Similar to that of the voter ID bill, same concerns.

Q. What were some of the racial concerns?

A. Well, that the impact it would have on minority voters. I had -- it denied people who had a legitimate right to vote.

Q. Did you -- again, did you work with MALC on this issue?

A. Yes, we did. concerns. I know Barbara Mallory Caraway out of Dallas raised some concerns. Representative Hellen Giddings, represents

District 109 in Dallas, had some concerns as well.

Q. And were any of their concerns addressed by the leadership?

A. I think there was some -- there was some tweaks made with respect to some of them on the night that we were voting on the map with the full House.

Q. Were those changes significant?

A. They were -- on that night there were just minor adjustments made.

Q. What did you interpret this to mean, all of these members of the caucus having their districts changed like that?

A. Well, I mean, the district was either being drawn to contain the growth so to speak or to weaken, or if there was growth potential down the road, you would either -- that was either being dismantled -- but when you add so many different communities of interest. The concern -- the concern was not just how the district was being drawn today and what it represents today. The concern was what happens -- what happens four or five, six years from now? What is the district going to look like four or five, six years from now? For example -- and as a policy maker it's not just enough to represent -- to legislate on behalf of the district that you, yourself, represent. I have * * *

Excerpts from the Trial Testimony of Dr. John Alford

* * * increase in districts? And I think, basically, there is – I would say there is a gain of about half a district, is what -- how I would see the whole plan.

JUDGE GARCIA: Half of one, you mean, or half of four?

THE WITNESS: Half of one.

JUDGE GARCIA: Right. And of the current map right now, the current law, how many minority opportunity districts are there? Is it ten or eleven?

THE WITNESS: I would say ten.

JUDGE GARCIA: And under the new map, 185, how many are minority opportunity districts? And that is going to count the flip from 27 --

THE WITNESS: Right.

JUDGE GARCIA: -- to 34.

THE WITNESS: So I think you can -- depending on how you count that, when we really haven't -- there are lots of disagreement on how to define a minority opportunity district. But I think depending on how you count that, I think the best -- my view of the adopted plan is that the adopted plan basically improves slightly the representation of -- in terms of Latino districts, based on both changes in the districts and the 35 and the 34 split, flip, and --

JUDGE GARCIA: But 34 is for 27, so you really can't count that as a gain, right?

TECHNICIAN: I'm sorry. My computer is crashing.

MR. RIGGS: That's fine.

BY MR. RIGGS:

Q. You reviewed Dr. Murray's homogeneous precinct analysis for Harris County and Dallas County elections, right?

A. I saw that in his report, yes.

Q. And you noticed that he found high levels of polarization between white and black voters in those counties, didn't you?

A. In the limited number of precincts that we looked at, yes.

Q. And similarly, he found a high number -- a high level of coalition voting between Hispanic and African-American voters, correct?

A. In the general election?

Q. Yes. Well, in 2008, 2010 general elections.

A. Yes.

Q. And that white voters were not voting the same way as African-American and Hispanic voters in Harris and Dallas County in general elections?

A. That is correct.

Q. Okay. So if we look at those exit poll numbers --

A. Yes.

Q. -- where there is a nonHispanic candidate -- so there are three different ones, up top, in the middle and then the bottom got cut off. We can just go down to the button, if you don't mind. Oh, I'm sorry. depend on the turn-down proportion of the register vote in the general election, but it wouldn't surprise

me under a lot of ways that that could work out, particularly if the -- if the number of turned-out voters in the general election in the district that are Hispanic substantially exceeds or equals the Anglo proportion.

Then if we see these kind of numbers, then it would be true that in the general election, there was more support coming from, in vote total, coming from Hispanics than from Anglos.

I am just cautious, because I think -- when you get to turnout in those districts, the difference in turned-out vote between the Anglos and Hispanics is sometimes not very different.

Q. But given those cautionary notes, that would indicate African-American and Hispanic voters are working in coalition in those three districts?

A. In the general election, I think, yes, that they definitely vote together in the general election in those three districts.

MR. RIGGS: Pass the witness.

JUDGE GARCIA: Mr. Hicks. Go ahead.

* * *

Discovery – Emails

Doc # 117-6

From: Corbin Casteel [wccasteel@mac.com]
Sent: Friday, June 10, 2011 10:35 AM
To: Gerardo Interiano
Subject: Fwd: 9 Jun 11
Attachments: 9Jun11.zip; Untitled attachment 01092.htm

Any truth to this part?

> "If DOJ objects, the Texas federal court grants legislative deference to the map passed by the Legislature and is required to remedy ALL of DOJ's objections in its map. If preclearance is only pursued at DOJ there will be, most likely, a longer list of objections.
>
> If Texas foregoes DOJ preclearance and litigation is not completed in the DCDC, the Texas three-judge panel cannot use the legislatively-enacted map and would be required to begin from the 2003 map as if this were a deadlock case."

Begin forwarded message:

From: Dub Maines <dubmaines@gmail.com>
Date: June 9, 2011 5:39:29 PM CDT
To: Dub Maines <dubmaines@gmail.com>
Bcc: wcc@casteelinc.com
Subject: Re: 9 Jun 11

I would like add a correction that I received on the message that I sent earlier:

> "If DOJ objects, the Texas federal court grants legislative deference to the map passed by the Legislature and is required to remedy ALL of DOJ's objections in its map. If preclearance is only pursued at DOJ there will be, most likely, a longer list of objections.
>
> If Texas foregoes DOJ preclearance and litigation is not completed in the DCDC, the Texas three-judge panel cannot use the legislatively-enacted map and would be required to begin from the 2003 map as if this were a deadlock case."

And another:

"DOJ's punch list will grow exponentially if they know we have to make changes. Little things that they wouldn't have nit picked in a clean map will show up on the list because of the obvious retrogression and lack of new Hispanic seat."

That having been said, is there any reason why every effort should not be made to make the map more likely to pre-clear, especially if it doesn't hurt the political aims in any way?

On Thu, Jun 9, 2011 at 1:15PM, Dub Maines <dubmaines@gmail.com> wrote

I would really appreciate you looking at this modified Solomons/Seliger map. It is 26R and 10D, as is the one the House Committee just passed. However, the Committee-passed map badly retrogresses CD20 without creating a new VRA district. CD35 is in no way a VRA district; it is a district that re-elects Congressman Doggett – whether he receives the support of Hispanic voters or not.

In the map I've sent you, CD25 is a heavily-Republican, Hill Country, West Texas district. CD20, contains the southeast quadrant of Travis County, has incumbent Congressman Charlie Gonzales in it, is heavily Bexar County, and is a legal, performing VRA district. CD35 is an open seat and is a district from southern and central Bexar County to Webb County. It is a legal, performing VRA district.

The Committee map, as passed, has next to no chance of pre-clearance -either by Justice or the DC circuit court. The map I've sent you has a very high probability of pre-clearing- at least in the DC court. This is the analysis of those who have practiced in the Voting Rights area- very successfully- for over 25 years. I would encourage you to speak with them about the Committee-passed map. They may be from evil DC, but they ARE the premier experts in this area, and I believe it would be prudent to entertain their thoughts on this map! There seems to be quite a bit of confusion about Section 5 pre-clearance. Section 5 is not like Section 2, in that Section 2 deals with existing maps and makes minimal changes to those existing maps, if the courts feel changes are needed. Section 5 pre-clearance decides if a map ever

really "exists." If a map is not pre-cleared, then it is as if nothing had ever been drawn. The courts will draw the map de novo as they did in 2001. Doggett will be re-elected. Canseco will not be. Farenthold will not be. They will likely split the baby on the 4 new seats. The Ds pick up a net of 4 seats. The Rs pick up a net of zero seats. This idea of challenging the Constitutionality of Section 5 is high-risk poker with no discernible positive return.

Again, I would appreciate you importing and looking at this map. Please call on me if you have any questions, comments, or suggestions.

Thank you,
Dub Maines
972-898-6796

* * *

From: Eric Opiela [eopiela@ericopiela.com]
Sent: Tuesday, June 14, 2011 8:32 AM
To: Gerardo Interiano
Subject: Re: why

No, just I think it's not good to not have all the stats at benchmark when we know its possible. Yes, I know CD 20's 10 of 10 performance and agree taking it below benchmark on SSVR can be justified by the creation of a new district. However, we know we can create the new district AND keep it at benchmark, so we should. Sure, it performs the same, and will it make a difference in the end with the court, probably not; it just gives an easy paragraph where they can say we retrogressed, and we have to explain why it

doesn't matter. That said today's amendment is enormously better than C149, so let's just play ball. I do feel I was mislead into thinking y'all were going to keep all the districts at benchmark yesterday, and frankly, I used that argument to calm Lee and Chris Homan down when they were threatening to blow it all up. What is done is done.

Let's get this bill passed!

EO

On Jun 14, 2011, at 6:57 AM, Gerardo Interiano wrote:

It's at 56.3...and it performs 10/10. You're looking at total when you should be looking at non-suspense VR. Call me later this morning if you want to talk further. Also, can you send me the analysis that you did on all the amendments?

-----Original Message-----
From: Eric Opiela [mailto:eopiela@ericopiela.com]
Sent: Monday, June 13, 2911 11:06 PM
To: Gerardo Interiano
Subject: why

Why do this to me? I get the stats to benchmark in 20 and look at the report tonight and y'all dropped them to 551 Please, please say this whole exercise was not for naught. Call me crazy but I could care less about 35 being at 45--the thing will probably perform at 40, why not take that difference and

attempt to meet it if we can? I calmed Lee, Holman, et. al. down today to have this done?

GMAIL Ryan Downton <rdownton1@gmail.com>

CD 10/25 precinct changes in Travis
1 message

Eric Opiela <eopiela@ericopiela.com>
Wed, Jun 1, 2011 at 11:16 AM
To: Ryan Downton <rdownton@platinummri.com>

Ryan,

Can you swap the following precincts in Travis Co? CD 25 will still be over Statewide ORVS but McCaul won't be floating below 55 McCain (I know RedAppl has him technically above, but that's because RedAppl doesn't take into account. turnout when splitting VTDs).

Thanks

Eric

>The following changes should equalize GOP% between CD 25 and CD 10 and was the least complicated switch.
>
>Travis CD 10 VTDs .130, 135, 136 to CD 25
>Travis CD 25 VTDs 377, 378 to CD 10
>Travis VTD 376 (part to equalize pop) to CD 10

* * *

From: Eric Opiela [eopiela@ericopiela.com]
Sent: Thursday, June 02, 2011 9:33 PM
To: Gerardo Interiano
Subject: political and hcvap reports

gi-

Could you please get me the political and hcvap reports for c130, if possible tonight? I'm sending out a delegation update, and would rather provide the RedAppl political data rather than mine because your numbers are higher due to the way redappl splits vtds (it doesnt take into account when disagregating vtd data to the block level). if not, that's fine, but I'm trying to prevent the grousing about how low cds 10 and 21 are....

thanks

EO

* * *

From: Gerardo Interiano [ginteriano@gmail.com)
Sent: Friday, June 03, 2011 8:10AM
To: Eric Opiela
Subject: Re: political and hcvap reports
Attachments: C130-HCVAP.pdf; C130-Statistics.xls

Here you go.

On Thu, Jun 2, 2011 at 9:33PM, Eric Opiela <eopiela@ericopiela.com> wrote:

gi-

could you please get me the political and hcvap reports forc130, if possible tonight? I'm sending out a delegation update, and would rather provide the RedAppl political data rather than mine because your numbers are higher due to the way redappl splits vtds (it doesnt take into account turnout when disaggregating vtd data to the block level). if not, that's fine, but I'm trying to prevent the grousing about how low cds 10 and 21 are ....

thanks

EO

OFFER OF PROOF: SWORN STATEMENT OF DAWNNA DUKES

I, Dawnna Dukes, declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

0. My name is Dawnna Dukes

1. I am a State Representative.

2. I live at 1103 Rutgers Drive, Pflugerville, TX 78660

3. I have been a State Representative since 1995 where I represent much of Travis County Including East Austin.

4. I am a graduate of Texas A & M University at College Station.

What do you think about the fairness of the process on Congressional Redistricting?

In reference to the Congressional Redistricting there was no input requested from the members of the Travis County Delegation or at least the members from East Austin. The maps were not made available until the Bill was eligible under the calendar rule to come to the floor. They were made available on Red Apple to meet a calendar rule for preparing any amendments. This was during the special session in June. We received the maps at the very last minute to make any changes. Some Republicans were clearly familiar with the map. In reference to Travis County the Western portion of Travis County was left intact.

Was the process regarding the adoption of the House Map fair?

No it was not. We were given the map and laid that we needed to get changes in right in the middle of a holiday weekend. This was clearly unfair and It Impaired our ability to provide input. Further, the map was adopted with quite a bit of time left in the session. There was no need to hurry and adopt the map. We did not have any public hearings after the maps were revealed and this greatly compromised the ability of the public to have any meaningful input.

Do you think that the proposed congressional Map, C185, Is fair to racial and ethnic minorities in Travis County or to Travis County?

No I do not. For example, if you decide to take a drive through Travis County from the southern end and move to the northern end on I35, you will drive through zigzagging districts. There are 5 districts now that split that area but you will change districts about 8 or 9 times. The map also exhibited discriminatory bias against minorities and the residents of East Austin further. Only in Travis County in the Eastern Part was the community split, whereas the Anglos in West Austin were largely kept together as a community of interest. II was the minority community in East Austin that was severely cut up.

We have roughly 1.2 million constituents in Travis County so we should have had an anchor Congressional District. We are the only urban county that had this problem. The greatest concerns of Republicans was to keep rural counties whole at

the expense of urban minority communities of interest. It was about keeping white rural communities together. By removing African-American boxes they have denied the community the opportunity to select the Congressperson of their choice and have largely isolated them in, districts into which they will not have any influence and to which there is no community of interest. For example east Austin and Burnel County do not have a common bond.

Many precincts were split in East Austin. Some were split down to the curb level. They did not follow natural boundaries. This was particularly clear in deep East Austin where African-American influence was extremely high. In my testimony on the floor I spoke to that. Chairman Solomon did change some of this after we complained. It would have caused a great amount of confusion about where someone would go and vote. This was all for the purposes of them grabbing minority votes and move them into predominately white Congressional Districts where they would have no influence or nothing in common with those in the District As a consequence this would create voter apathy. The McCaul district from 10 years ago that extended to Houston was an example of this.

Bexar County and Travis County have very little in common. We have different festivals, dates of celebration, etc. They don't have the same churches, schools or concerns of the schools. It would be very difficult for a Congressional Member who represents a large number in Bexar to meet the concerns of a smaller community in Travis. A Congressman will be required to pick and choose for example between

schools and it is likely that the area with the smallest population will lose.

The district is questionable in how it is drawn. It is similar to strip annexation where the City tries to reach and grab an area while ignoring the communities in between. Texas law does not permit this in the annexation arena as it requires a more compact annexation policy.

For greater than 40 years, East Austin as a whole has had one congressperson. In the 1940's African-Americans were required to live East of I35. It became a thriving but segregated community. African American and Hispanic families attended those schools and lived in those areas. My own family has lived there for 3 generations. Each of these generations has been able to elect a candidate of our choice for Congress. As our community grew and moved from Central East to North East Austin and Central East Travis County this community of interest extended. African Americans still attend church in East Austin, frequent businesses and our ancestors are buried the two or three African American cemeteries but our homes have been separated by this map from our community. This community was destroyed and placed into 5 separate Congressional Districts and has caused us to be unable to elect the candidate of our choice for the next 10 to 20 years. We have played a crucial role to the election of the Congressperson who represents this area. We have played a crucial role with Latinos in the election of the Congressperson who represents this area. When the bacon strip district was utilized and Lloyd Doggett defeated that candidate, he won the minority vote in East Austin and this was very

important for him. He won the minority vole even though he had Latino opponents in the primary and in the general election.

Were the minority members of the Harris County delegation responsible in any way for changing Sylvester Turner's district or pairing Vo and Hochberg.

I was on the floor debating the map when all of a sudden things were called to a halt. Representative Garnett Coleman from Houston, a fellow member of the Legislative Black Caucus, was quite upset over some changes to his district. One of them involved a medical district. This area had been placed into Beverly Wooley's district. He called a point of order and threatened to shut down the whole process. Suddenly, there was a rush to go into the back hallway. Garnett Coleman and Beverly Wooley both went to the back to the room. Alma Allen realized that her office was taken out of her district and there were some problems with Senfronia Thompson's district. There were some precincts taken out of Representative Thompson's district and if I recall correctly under threat of a point of order the precincts were restored.

Sylvester Turner was upset because they took a majority of his traditional vote and put it into another area. He did not like the fact that they changed his district greatly. I believe he was able to get a couple of changes in regarding his district that I believe strengthened its Voting Rights character, but this was not in the same meeting process that led to the changes to the districts of Representatives Coleman and Thompson.

Gamel Coleman's point of order led to him getting things placed back in his district.

This meeting where these changes were made was between Republicans and Democrats with Republican Beverly Wooley leading the meeting. The meeting was in the Chief of Staff's office and we had to wait for 2 or 3 hours until they completed the meeting before we could resume. Representative Wooley even stated from the front microphone that she had worked the agreement with Representative Coleman.

Dated: September 14, 2011
Digitally signed by
Dawnna Dukes
Date: 2011.09.13
20:52:51 -05:00
Dawnna Dukes

OFFER OF PROOF: SWORN STATEMENT OF WILHELMINA RUTH DELCO

I, WILHELMINA RUTH DELCO, declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

1. My name is Wilhelmina Ruth Delco.
2. I live at 1805 Astor Place, Austin, TX 78721.
3. I have lived in Austin for 48 years. Prior to that, I lived in Houston.
4. I am an African-American.
5. I am a registered voter.
6. I have an extensive history in public office. I was first elected to the Austin Independent School District Board of Trustees two days after Martin Luther King, Jr., was assassinated. I believe I was the first African-American to hold elected office in Austin. I was on the school board from 1968 until 1974.
7. I was on the founding board of Austin Community College.
8. I was first elected to the state legislature in an at-large election in 1974. In my first session, I co-authored the bill that changed the method of election in Travis County from at-large to single-member districts. I then was elected from District 50 in Austin in the next election. I served in the state legislature for 20 years. I did not run again in 1994.
9. While in the state legislature, I was the chair of the Committee on Higher Education for 12 years and served as Speaker Pro Tempore for 2 years. These roles were challenging as a black woman.

10. During most of my service in the state legislatures, the dominant party was the Democratic Party. Ideological divisions within the party were more significant that divisions between parties. Many conservative Democrats often acted against the interests of black voters, as do many modern-day Republicans.
11. Redistricting did not used to be as tense because even with large minority populations, everyone tended to be represented by Anglo men. There were very few minority representatives to fight for the interests of minority voters during the redistricting process.
12. I believe that as an African-American representative, I was able to bring valuable benefits to my Austin constituents. I was able to focus on and understand issues that were unique to the African-American community. Before minority representation, there was no one to articulate or follow through on the concerns that had been brought to light by the civil rights movement. But Black consciousness and involvement grew, as did Hispanic consciousness and involvement. This is why minority representation is so necessary.
13. I think the purpose of creating Congressional District 35 was to remove the candidate of choice of African American voters, Lloyd Doggett. He has always reached out to the African-American community. Congressional District 35 makes us irrelevant in the political

process. We are divided up into many different districts.

14. We have previously had a clearly identifiable community, including Huston-Tillotson, the oldest university in the city. JJ Pickle, our congressman before Lloyd Doggett, made sure that Huston-Tillotson was aware of and could apply for grants. Now the university could be in one district, and bulk of black population in other districts.
15. Rep. Pickle, like Rep. Doggett, was the choice of African American voters.
16. If you do not make up a substantial portion of one district, you can be ignored. Lloyd Doggett recognized that the African-Americans in his district in Travis County had a strong influence on the elections and that we were a substantial, historical, and responsive African-American community. Now, without making up a significant portion in any district, we will have no say. We will not matter to any politician seeking re-election.
17. I would like to see a commitment to keeping all of Travis County within one district. The African-American population within Travis County is a recognizable, historical and influential community within the county and would have its voice better heard if the community, and all of the county, were in one district.

Dated: September 14, 201

_____

Wilhelmina Ruth Delco

Excerpts from Trial Testimony of Ryan Downton

minor changes to the surrounding districts as well.
Q. After 153 --
JUDGE SMITH: Whose district is 148?
THE WITNESS: 148 is representative Jessica Farrar's district. She is a Democrat.
BY MR. MATTAX:
Q. And H-153, then, with the changes requested by MALDEF, was passed out of committee?
A. Yes.
Q. And let's pull up now map H-271. And could you describe what this map is?
A. So after we passed H-153 out of committee, we went to floor debate on the map. At that point, the Harris County Democrats said they were not happy with the way the Democratic districts within Harris County had been drawn. At that point, we stopped the floor debate for about three hours for people to meet with the Harris County Democrats and try to get their input. They were told, leave the Republican districts alone, and here are some parameters that we think are important legally, that you need to not drop your SSVR or black voting age population of the respective districts. You need to keep 148 above 50 percent. Within those guidelines, you guys draw your districts however you think is best for your constituents, and we will adopt it that way. And so they spent several hours working on that and then came up with a plan they were satisfied with, and that is plan 271, which was submitted by -- it says Representative Coleman, et al. Representative

Coleman is a Democrat. And it is my recollection it was submitted by all of the Democrats in Harris County, and that was adopted by the House as a whole unanimously. So the changes that they put in, a bunch downtown, and so that is where kind of the borders between the districts got narrowed, as a result of that.

JUDGE SMITH: Representative Turner was voting in favor of that as well?

THE WITNESS: I believe the entire House of Representatives, including Representative Turner, voted in favor of it.

JUDGE RODRIGUEZ: I want to make sure I understand. The instructions that the Democrats received, if I heard you correctly, they were told they could not touch the Republican districts?

THE WITNESS: That is correct.

JUDGE RODRIGUEZ: Now, yesterday, we heard testimony that four Anglo Republicans on the east side of Houston, population wise, it would appear that those districts should have gone from four to three, but that it remained at four and population was shifted from minority population along the west have voted for him as well.

Q. The Court has already heard some testimony, so I won't go into that with you. But nevertheless at the time you and other map drawers were drawing Plan 283 for Harris County you knew that District 149 was, in fact, currently electing a minority member to the Texas House of Representatives?

A. Yes.

Q. And you knew that that district had, in fact, elected a minority member to the Texas House of Representatives for the last three or four --

JUDGE SMITH: That's already been asked and answered, Mr. Gray.
MR. GRAY: I'll move on, Your Honor.
Q. (BY MR. GRAY) Despite knowing that, why was District 149 dismantled?
A. District 149 was not a minority majority district.
Q. So despite the fact that it had been electing a minority member, despite the fact that it had returned a minority member, it was your determination or someone's determination that it was not a district that you needed to worry about and you were free to dismantle it?
A. Yeah, it was not a minority majority district. I don't think anyone disputes that.
MR. GRAY: Thank you. I have no further questions.
JUDGE SMITH: Now, as to El Paso didn't you tell us minute. And you had represented earlier that they were given -- the Democratic members of the delegation were given the instruction don't touch Republican districts but then do what you will?
A. That's my understanding. That wasn't a meeting that I was there for, so that's what I heard afterward. But if people that were actually in the meeting would have a different recollection I would defer to them since I wasn't there.
Q. And you testified earlier that they then signed off on a plan with your -- under your understanding of their instructions they signed off on the plan?
A. My understanding is that Representative Coleman offered a Harris County amendment that they all supported and all voted for.
Q. You believe that every member of the delegation supported that plan?

A. My understanding is that every member of the delegation and the Texas House as a whole voted in favor of that plan.
Q. Do you -- but you wouldn't testify that everyone, every member of the delegation, was in on the meeting when they took that break to go meet about the delegation -- to meet about how to redesign the Democratic --
A. I don't know the answer to that.
Q. Okay. Were you present for House floor debate on Wednesday, April 27th? of my district office, can you get it back in the district, that would have been the only time we looked at that.
Q. At any time -- were you made aware anytime someone called your office even if they didn't get to directly talk to you with concerns?
A. My office, yes.
MS. RIGGS: No further questions.
JUDGE GARCIA: Anybody else over here on the plaintiff's side?
MR. GRAY: I don't believe so, Your Honor.
JUDGE GARCIA: Okay.
MR. MATTAX: Very briefly, I guess this is a question for Mr. Hanna. Is there a topographic feature you can overlay on top of the maps to show this map, yes or no?
MR. HANNA: (Shakes head).
MR. MATTAX: No? Very good. Sorry about that. We'll probably -- we'll try to create a demonstrative exhibit for the Court that combines the geographical features.
JUDGE GARCIA: Sure.
EXAMINATION
BY MR. MATTAX:

Q. When Ms. Perales was questioning you she was talking about -- focus your attention on Congressional District 27. I believe you testified there were two goals with regards to that district, but I only heard one goal discussed. What was the

Excerpts from Trial Testimony of Gerardo Interiano

* * * that it doesn't exist?

A. I just don't believe that there are coalition districts. I think that there are Democrats that vote together and Republicans that vote together, but I don't believe that coalition districts exist.

Q. So what sort of terminology would you use to refer to Congressional Districts 9, 18 and 30?

A. You're going to have to tell me who 9, 18 and 30 are.

Q. It's Representative -- Congressman Green, Congresswoman Jackson-Lee and Congresswoman Eddie Bernice Johnson.

A. If I recall correctly, Congressman Green's district is above 50 percent Hispanic. I don't recall the numbers on those other districts. Again, I was not the lead on the congressional map.

Q. Well, maybe -- can I have you look at C 185 then and check the numbers on those?

A. Is that available here?

MR. MATTAX: It would be number one. May I approach, Your Honor?

JUDGE GARCIA: (Indicating.)

MR. MATTAX: Here are the maps right here. Just look at those.

THE WITNESS: Okay.

Q. (BY MS. RIGGS) Just to clarify, I was referring to

Congressman Alexander Green, an African American representative, and not Gene Green.

A. Sorry about that. What number was it?

Q. I'm looking at C 185, the enacted plan.

A. Okay.

Q. Congressional Districts 9, 18 and 30.

A. I would consider all three of those African American districts.

Q. Opportunity districts?

A. I guess -- how are you distinguishing an African American district versus an African American opportunity district?

Q. Let me go back to your deposition. Do you remember testifying there are either majority minority districts or nothing else?

A. Yes, but I think that was in terms of the Hispanic or Latino districts. I think that Hispanic and Latino districts perform very differently from African American districts.

Q. Okay. So you have different sets of terminology for African American districts than you do Latino districts?

A. Yes, due to the citizenship issue.

Q. Okay. So what is a -- so are there coalition districts when

African American numbers are involved?

A. No, because I believe -- I believe that an African American district can perform at a lower threshold than a Latino opportunity -- than a Latino district.

Q. Okay. So if there is an African American opportunity district it's not necessarily an African American majority minority district?

A. That's correct.

Q. Okay. And so the districts that I listed, those are not African American majority minority districts?

A. They are below 50 percent black voting age population, but I still believe that they are African American districts.

Q. African American opportunity districts?

A. Sure.

Q. And do you believe that voters in that -- African American voters need the coalition of any other racial groups in that district?

A. I wouldn't know. I think you'd have to ask Ryan that question.

Q. You never looked -- you never had any discussion about whether Latino voters would be voting with African American voters in that district to enable the election of African American candidates?

A. Again, Ryan Downton was the lead on the congressional map. My role in that was to assist Ryan as necessary, but he was the lead on that map.

Q. Do you believe when it comes to African American numbers that influence districts exist?

A. I don't believe so. I think that it's either you have an African American district or you have a Hispanic district.

Q. So where is the cutoff between what would be a nonexistent that it doesn't exist?

A. I just don't believe that there are coalition districts. I think that there are Democrats that vote together and Republicans that vote together, but I don't believe that coalition districts exist.

Q. So what sort of terminology would you use to refer to Congressional Districts 9, 18 and 30?

A. You're going to have to tell me who 9, 18 and 30 are.

Q. It's Representative -- Congressman Green, Congresswoman Jackson-Lee and Congresswoman Eddie Bernice Johnson.

A. If I recall correctly, Congressman Green's district is above 50 percent Hispanic. I don't recall the numbers on those other districts. Again, I was not the lead on the congressional map.

Q. Well, maybe -- can I have you look at C 185 then and check the numbers on those?

A. Is that available here?

MR. MATTAX: It would be number one. May I approach, Your Honor?

JUDGE GARCIA: (Indicating.)

MR. MATTAX: Here are the maps right here. Just look at those.

THE WITNESS: Okay.

Q. (BY MS. RIGGS) Just to clarify, I was referring to

Congressman Alexander Green, an African American representative, and not Gene Green.

A. Sorry about that. What number was it?

Q. I'm looking at C 185, the enacted plan.

A. Okay.

Q. Congressional Districts 9, 18 and 30.

A. I would consider all three of those African American districts.

Q. Opportunity districts?

A. I guess -- how are you distinguishing an African American district versus an African American opportunity district?

Q. Let me go back to your deposition. Do you remember testifying there are either majority minority districts or nothing else?

A. Yes, but I think that was in terms of the Hispanic or Latino districts. I think that Hispanic and Latino districts perform very differently from African American districts.

Q. Okay. So you have different sets of terminology for African American districts than you do Latino districts?

A. Yes, due to the citizenship issue.

Q. Okay. So what is a -- so are there coalition districts when African American numbers are involved?

A. No, because I believe -- I believe that an African American district can perform at a lower threshold than a Latino opportunity -- than a Latino district.

Q. Okay. So if there is an African American opportunity district it's not necessarily an African American majority minority district?

A. That's correct.

Q. Okay. And so the districts that I listed, those are not African American majority minority districts?

A. They are below 50 percent black voting age population, but I still believe that they are African American districts.

Q. African American opportunity districts?

A. Sure.

Q. And do you believe that voters in that -- African American voters need the coalition of any other racial groups in that district?

A. I wouldn't know. I think you'd have to ask Ryan that question.

Q. You never looked -- you never had any discussion about whether Latino voters would be voting with African American voters in that district to enable the election of African American candidates?

A. Again, Ryan Downton was the lead on the congressional map. My role in that was to assist Ryan as necessary, but he was the lead on that map.

Q. Do you believe when it comes to African American numbers that influence districts exist?

A. I don't believe so. I think that it's either you have an African American district or you have a Hispanic district.

**Q. So where is the cutoff between what would be a nonexistent * * *

OFFER OF PROOF: SWORN STATEMENT OF FRANKLIN MOSS

I, Franklin Moss, declare under penalty of perjury that had I been called to testify live in the above-captioned action, I would have testified as follows:

1. My name is Franklin Moss.

2. I live at 5625 Eisenhower Drive, Fort Worth, Texas.

3. I have been a member of the Fort Worth City Council from 1997 to 2004 and from 200 to present.

4. I am a registered voter.

5. I am African American.

6. We must look at the combined strength of the black vote and the *Latino* vote in the context of redistricting and in electing public officials who are going to be representative of our communities.

7. I believe that Fort Worth ISD is the only school district in the state where the school board president is elected at-large.

8. Blacks in Fort Worth have run candidates for school board president but have not been successful because of the lack of money and because of white bloc voting against those candidates.

9. It took a working effort by Blacks and Latinos to get that changed.

10. There will now be nine single member districts on the school board.

11. The school board members themselves will be able to elect the president.

12. The Black and Latino communities work together to assure the elected representative is the election of represented is sensitive to minority's issues. The coined voting strength of the Black and Latino has given a combined strength to elect minority representation. In the City of Fort Worth, Districts 2 and 8 have elected a Black and Latino Council Members.

13. The combined strength of the Black and Latino communities has allowed minority representation across the State. Senator Wendy Davis - District 10 under the old district is sensitive to the minority communities concern and needs. The combined coalition of Black and Latino voters contributed greatly to the election of State Senator Wendy Davis.

14. The new redistricting is an attempt to divide the voting strength of Black and Latino communities by separating them into various districts will result in each community not being able to elect a representative who is sensitive to the minority and community concerns and needs.

15. Attempts to move inner city minority communities into districts that are majority rural counties will leave Black and Latino with no representation.

16. The last City of Fort Worth election showed that a combined collaboration of Black and Latino voters in Southeast and Central North Side of Fort Worth was not sufficient to overcome the voting strength of the non-minority west side and far north side areas of Fort Worth in an at large election.

Dated: September 14, 2011

FRANKLIN D. MOSS

UNITED STATES DISTRICT COURT DISTRICT OF COLUMBIA

Case No. 1:11-CV-01303 (RMC/TBG/BAH)

STATE OF TEXAS,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

September 21, 2011

EXCERPTS FROM TELEPHONIC CONFERENCE BEFORE THE HONORABLE ROSEMARY M. COLLYER UNITED STATES DISTRICT COURT JUDGE

* * * from the 25th of October, but I will find out and we will set a time. I hate to tell you, but we will set a time that fits the schedules of three different judges, and we hope that you will be able to accommodate that time, but it won't be very flexible.

Does everybody understand that reality?

MR. SCHENCK: (Unintelligible), Your Honor.

The State of Texas does. David Schenck.

THE COURT:

Okay. Now, --

MR. POSNER: Your Honor, this is Mark Posner on behalf of MALC.

In the last conversation that the parties had, the scheduling call, there was some discussion about the manner in which trials often are conducted in these Section 5 matters, and trials that involve a lot of documentary evidence being submitted, depositions, exhibits, et cetera, with a limited amount of live testimony.

For example, (unintelligible) the Ashcroft case, I believe that's the last trial in a Section 5 matter for the District Court here, and that is the way that that case was handled. So I guess I wanted to note that, and also, I guess, pose the question whether you know, how this schedule that we're contemplating takes into account the possibility that some trial, at least a trial in that fashion, will need to be held, or whether it would be appropriate to actually schedule a limited trial now, in terms of trying to accommodate everybody ones schedules, and then to move this matter forward.

THE COURT: Well, the way that it is presently teed up by the State of Texas is on a motion for summary judgment, and the normal way for that to be handled would be for parties to oppose providing such affidavits and other information as they choose from their discovery, and for Texas to reply, and for the Court then to determine whether the record, as presented, is sufficient, and whether summary judgment can be granted in whole or in part.

That would be --At the moment that's what we're aiming for, that's what we're scheduling for, to have done hopefully, some signal from on high before

the 11th of November because that's for-- I mean, exactly how that might come out and what that decision might be, I don't know, and whether we end up issuing an order without a full decision, you know, who knows what we're going to do in actually handling that, but that's the direction we're driven.

Now, if-- That's because it's a motion for summary judgment. If the State of Texas, hearing everybody's objections and the position of the United States, now thinks, "Well, our motion for summary judgment needs to be augmented, rethought, reargued, "whatever, why then we can say, "Okay, we won't do this by motions, we'll do it by trial," and everybody will do their discovery and we'll set a trial date, and people can come forward to Washington with, as you suggest, mostly documentation and things, and very few witnesses, we'll develop a record, and then the Court will decide it on the basis of that trial record.

But at the moment it's Texas' lawsuit and Texas' motion for summary judgment, and that's what we're scheduling.

I don't know, Mr. Schenck, we didn't pursue that, Mr. Posner's point with you, as to whether in light of all the responses you've gotten, you would rather say, "Okay, let's just go to trial and get this done, instead of try summary judgment", and have somebody say, "Well, I can't really decide on this record", which I'm not anticipating, but which is, with summary judgment, always a risk.

MR. SCHENCK: Well, Your Honor, David Schenck for the State. My hope is somewhere in between that --

THE COURT: You want both, all in the space of ten days. Okay, keep going.

MR. SCHENCK: I filed a motion for summary judgment. I was hoping that we might identify and eliminate non-genuine or material fact disputes from the case by having the parties, in their summary judgment responses, either identify the legal standard so we know what it is that we're said to be discovering as we go forward in the case, and also at the same time, to the extent additional discovery or affidavits are necessary under Rule 56(f), they will identify that.

If we're comfortable that we believe, on the appropriate legal standard, we're entitled to summary judgment in this case, we would really like (unintelligible) notwithstanding the DOJ's guidelines that they believe the law is here, and we think the Court would benefit from knowing that, as well.

So--

THE COURT: Well, I thought that Mr. Mellitt said that he sent something to you all that laid out what the United States thought was the standard, and how it applied, and that I was actually going to ask him to send me a copy. He didn't have to file it, per se, unless you guys wanted him to so the whole world * * *

EXCERPTS FROM CONRESSWOMAN EDDIE BERNICE JOHNSON'S SWORN TESTIMONY

September 12, 2011

* * *

COURTROOM DEPUTY: would you please raise your right hand.

(Oath administered to the witness.) COURTROOM DEPUTY: Thank you. Have a seat.

* * *

DIRECT EXAMINATION BY MR. BLEDSOE:

Q. Good morning. would you state your full name for the court, please?

A. Eddie Bernice Johnson. And before I go further, let me explain that I have damage to my right vocal cord, so there are times when my voice might fade, so if you don't hear me clearly, just let me know. I am a member of Congress. This is my nineteenth

* * *

candidate of choice for the Latino voters. I had no reason to believe that that would -- we met several times, and then after that, we didn't hear very much, but I kept in touch with Congressman Smith, and he kept ensuring us that things were moving along.

After I turned the map over to him that we worked on, we did some little changes to the edges around it, because at that time, at the first map, once it was put into numbers, my home and office was left out of it, and we restructured it and we were able to correct that.

I asked them several times how it was going. We went to his office to look at the map. And then when he instructed us to meet regionally, I did meet with some state-elected people, House and Senate 1n the Dallas area, to share the map and to discuss it with them, and I gave each of them copies.

Q. Now, let me back up a second and pick up on one of the points that you just made. I think what you have indicated to this Court is that you specifically and directly communicated to the drafters of the map that your home and your office were left out of the proposed district and you wanted them to correct that?

A. Yes.

Q. okay. And was that corrected?

A. It was corrected in the map that the delegation submitted. It was not corrected in the map that came out of the legislature.

Q. And it is true, is it not, I think that your office and the office of both Congressman Green and Congressman Lee as well were not included in the adopted districts?

A. That is my understanding.

Q. And can you tell this Court any white incumbent congressperson who did not have their office in the currently proposed map?

A. I am not aware. I am not aware of any.

Q. And why 1s it important for you to continue to have your office within your district?

A. Well, I have been in this location a while. Constituents all over the area, even as far away as Amarillo, know where that office is, and they come. The entire north Texas area, we have people coming for assistance, and it is convenient for them. It is easy, accessible, and the rent is not nearly as high as it would be in other places. The parking is free.

Q. Now, can you tell the court what your response was when you found out that there was a map and it didn't include your recommendations?

A. I was extremely disappointed. As a matter of fact, I thought at first it might have been a joke, because it just seemed like it was so unnecessarily chopped up, in areas that I had worked so hard.

And it paired -- it put a large number of Latinos and a larger number of African Americans in the same map, and a large number of African Americans that were in a federal prison that were counted into the total, but obviously don't have voting rights.

I never had that area before, and never had to count them as a part. But when I looked at that map, I started smiling, because every jail, every prison in the entire area had been included in that map.

Q. I want to show you your district in the adopted plan. Could you color shade there for black and Hispanic majority?

Now, you have won your seat, have you not, with the different levels of African American voting age population within the district, have you not?

A. Yes.

Q. And I know you won with 38 percent or less in that district, have you not?

A. Yes.

MR. BLEDSOE: could we increase it a little bit to show 30?

BY MR. BLEDSOE:

Q. Now, you can see your proposed district there with the shading indicating black and Hispanic population in the majority in those areas. And in looking at that, can you tell us what areas that were included in that map that you did not want to see included? or do you need us to add the streets on there?

A. well, I think I am understanding the question. What has happened in the community is that where it had been predominantly African American is where the largest Latino * * *

EXCERPTS FROM CONGRESSMAN ALEXANDER GREEN'S SWORN TESTIMONY

September 12, 2011

****

JUDGE GARCIA: So who do you have next?

MR. BLEDSOE: okay. Congressman Al Green.
JUDGE GARCIA: All right. Okay. congressman.
THE CLERK: Would you please raise your right ha sir?

(The oath was administered)

THE CLERK: Have a seat.

ALEXANDER GREEN, PLAINTIFF'S WITNESS, SWORN DIRECT EXAMINATION BY MR. BLEDSOE:

Q. Would you please state your full name for the court, please? Go ahead, Mr. Bledsoe.

MR. BLEDSOE: Thank you, Your Honor.

JUDGE GARCIA: If at any point you can't see it, let me know.

THE WITNESS: Thank you, Your Honor.

JUDGE GARCIA: can you see it now, congressman?
THE WITNESS: Yes, sir. Yes, sir.

JUDGE GARCIA: okay. Great. Thank you.

MR. BLEDSOE: okay.

BY MR. BLEDSOE:

Q. could you take a look at C185 and tell us what impact it has had on communities of interest within your district?

A. Yes. Your Honors, C185, as presented here, has negated -- if I may start with the district office that was 1n the district, it is no longer 1n there. It has been removed from the district.

JUDGE SMITH: where was that? I'm sorry.

THE WITNESS: That was just below 610 on Buffalo Speedway, right near South Main.

JUDGE SMITH: Yes.

THE WITNESS: And that area would be -- this is the 610 loop here. And it would be just below the 610 loop, which you can't see 1n that area, but right in that area. It has been extricated.

And also, the district was the home of the Astrodome, which is a great identifier for persons around the country. That has been removed from the district as well.

The Medical center was up in this area -- is up in this area and has been removed from the district.

There was a rail line that we've been working on for some time with the mayor of Missouri city, Mayor Allen Owen; mayor of Stafford, Mayor Leonard Sarcella. And that rail line ran along U.S. 90A. It's called the 90A rail line. we were able to have placed in an appropriations bill a million dollarsto get started with that project. That project has been extricated, removed from the district.

And communities of interest have been impacted. In this area we have what we call the Hiram Clarke area. It has * * *

EXCERPTS FROM CONGRESSWOMAN SHEILA JACKSON LEE'S SWORN TESTIMONY

September 12, 2011

COURTROOM DEPUTY: will you please raise your right hand.

(Oath administered to the witness.)

COURTROOM DEPUTY: Thank you.

****

DIRECT EXAMINATION BY MR. BLEDSOE:

Q. will you please state your full name for this court, please?

A. Good afternoon. Sheila Jackson Lee. I represent the 18th congressional District in Houston, Texas.

****

joy is to be a problem solver, so I recognize our responsibility. But it is very clear that the part of the district that I just mentioned to you, that goes deep into the 9th, heretofore has never been part of the 18th Congressional District.

Sometimes it is a growth area, and there are communities of interest there. That is not the case. In addition, the MacGregor area, which I mentioned to you, which right down 1n there, have been in the 18th Congressional strict since 1972, as this report indicates. And the business district, which includes the detention center that I worked on, to improve its relationship to the downtown business; we have a federal detention center there.

As a member of the House Judiciary Committee, I have worked to work with our federal courthouse and our judges. As senlor member of Homeland security, I have worked on a very, ry sticky issue that had to do with assisting them.

Then, of course, I have worked with the Federal Transit Administration, DOT, on a very long, long project, 25 years, which we may be seeing the light, and that is a light rail mobility project that was announced by the President two days ago in his speech.

We have been working to develop relationships between the downtown business community and the constituents the 18th Congressional District. That is a positive. That makes it a community of interest.

And one of the great friends that helped us keep the pools open was one of these corporate representatives here that answered the call of their particular member of Congress. That is going to be breached.

And what baffles me is that this was done to the h, this was done to the 30th, and now it is done to the 30th. Those communities of interest are extremely important. It is -- you can -- as big as Houston is, you can go into the 18th and find neighbors who have lived there or have had their relatives live there and have a historic understanding of this ea.

In the 18th is what we call Freedmen's Town. That goes all the way back to the 1900s, when they had a military my base right in that area there.

Q. So when you say that this was done to the 9th, the 18th and the 30th, are you saying that the economic engine of each s removed?

A. To my understanding, yes. certainly, the business district in the 18th was gone. If you -- all of our offices, the way, were taken out. I happened to be, very proudly, without arrogance, in the Mickey Leland Federal Building. Mickey Leland, of course, tragically lost his life as a humanitarian in Ethiopia. We named the Federal Building after him.

The building had -- I had Barbara Jordan's furniture. That is now out of the 18th congressional District. Mr. Green's congressional office is out of his

District, and Ms. Johnson's office is out of her district, and most her house.

And as we were commiserating, we know that economic engines are gone from the 30th. we welcome the incarcerated persons. I work with incarcerated persons. I have to have a le on incarcerated persons, because those are my constituents, in terms of their family members, so that is not a point, but all of the jails are in the 30th District.

Certainly, I have got my share of that in the 18th, but -- and then, of course, in Mr. Green's district, as I indicated, all of his -- parts of what was an economic engine for the 9th, I am told, is out as well.

Q. Now, I think Mr. Vera mentioned to me earlier that there was at least one Latino rep that this occurred to, but do you know of any nonminority congresspersons who lost their office with the configuration of C-185?

A. since we all have some conversations on the floor of the use, I haven't heard anyone in any major way, of my friends, her friends that indicated that. That is the point. We try work together.

We had an initial meeting. And I think it should be de clear that we do more work together than people know as Republicans and Democrats. We come from a state and we find ways to work together. The wild fires is a particular example, which, again, I worked on the fires that took place the spring. But those meetings were not carried through. * * *

EXCERPTS FROM THE TRANSCRIPT OF ERIC OPIELA'S DEPOSITION

October 17, 2011

* * *

Hispanic population in there. But it -- as we learned at trial, it seems to be totally impossible to draw a majority SSVR district in DFW. There just simply are not enough Hispanic citizen registered voters in the DFW

Metroplex to be able to create that district.

But we believe that it performs -- that it provides an opportunity for Hispanics to elect the candidate of their choice, and that's why we proposed it, even though it didn't have a majority SSVR population.

Q. Let me --

A. And can I make one distinction. What we don't believe is that it's required under Section 2, because we can't get it to 50 percent under Strickland. We didn't propose this district because we thought it was required under Section 2.

You had started this conversation by asking about compliance.

Q. Right. Sure. And --

A. But I wanted to make that distinction.

Q. Okay. And let me hone in on Section 5

A. Sure.

Q. -- since this is what we're dealing with here, and not Section 2.

A. Sure. Obviously.

Q. And in regarding Section 5, it's -- let me start, first of all, what is your general understanding of a district that would be protected under Section 5 of the Voting Rights Act?

A. A district that has a majority of a particular language or ethnic minority group specified in the Voting Rights Act, or in the case of the black plurality districts, ones in which currently allow the minority community to elect its candidate of choice, under the benchmark plan. That's the key with Section 5, is you don't look at the new districts. You look at the benchmark plan and make sure that the ability to exercise the franchise is not diminished as a result.

Q. So, just so what I understand what you're saying is that in terms of your understanding is that a district can be a plurality district and be protected by Section 5 of the Voting Rights Act; is that correct?

A. Well, we have two districts that are yeah, I think we have two districts that are examples of that in the map. We have the two districts in Harris County, which, neither of which have a majority black population, but are recognized as being protected.

Q. And sometimes that's -- well, let me step back and ask, what does the term "crossover district" mean to you?

A. Well, a crossover district, you know, from some of the cases that have been decided by the Supreme Court, are -- in fact, I think, crossover districts, if I remember correctly, are mentioned in Strickland by

the Supreme Court in 2009. These are districts that a non-minority group, say Anglo or non Hispanic whites or Anglos vote in a coalition with African-Americans or the Hispanic voters, to enable them to elect their candidate of choice.

In Strickland, if you might recall, the Supreme Court -- at least as regards to Section 2 -- rejected that argument and said that that was not something that was recognized. I might be wrong on that, but that's my recollection.

Q. And then in Section 5, since that's what we're focusing on here --

A. Sure.

Q. -- is -- are they protected under Section 5?

A. I don't believe that crossover districts are protected under Section 5. Because they do not afford the minority community the ability to elect, absent the -- some sort of coalition with a non-minority non-protected minority group.

Q. Does a coalition district mean something different to you than a crossover district?

A. Yes. Coalition district is a coalition between two minority groups, in my understanding, whereas a crossover district would be one with minority and non-minority group.

Q. And was your view of that that that was protected by Section 5 of the Voting Rights Act?

A. Well, I believe under Section 5, a coalition district would be, you know, these would be these two examples I just showed you, in Harris County, whereas a crossover district would not.

Q. And so they would be protected?

A. If they existed in the benchmark plan, yes.

Q. And at least in the two examples you've pointed out, you do believe they exist?

A. Yes.

Q. Okay.

A. The numbers show that.

Q. The -- are you familiar with the Department of Justice's guidance on redistricting?

A. I have read it. It was about eight months ago, whenever it was released. So I don't believe -- it was a voluminous document, so I can't recall everything from it. But go ahead.

Q. Well, I guess one of the questions, do you recall from that that the Department of Justice had suggested that there be a functional analysis looking at both numbers and election and election behavior, in order to determine whether a district provided an ability to elect?

MR. DE LEON: Objection, calls for speculation.

You can go ahead and answer.

THE WITNESS: Like I stated earlier, I can't recall specific items from that, but I did read it in

A. Yeah, I read Barton vs. Strickland, and my recollection of that case is, you know, is I read it to mean that crossover districts were not legally significant.

Q. Okay.

A. And I agree with that.

Q. Let me ask you, too, when you evaluated the different plans that you worked at and plans that you drafted, I take it that you always looked at a comparison between the districts under the new plan and the benchmark districts and which ones were minority performing?

A. Yes.

Q. And when you did that, I want to make sure I understand the criteria you used to determine whether a district was one in which minorities collect candidates of their choice.

A. Can you say that question again, because I got lost in your question.

Q. Yeah. I think we've established that with every plan you worked on as part of this process, you would compare the minority opportunity districts to those that existed under the benchmark plan, correct?

A. Yes. Yes.

Q. So my question for you is this: In determining whether a district was a district where minorities had the opportunity to elect candidates of their choice, what criteria did you use?

A. Well, we had this discussion with Mr. Hebert earlier. We looked at black voting-age population; we looked at SSVR; we looked at HCVAP, where we had it, okay; and we looked at the Anglo VAP as well, to make that determination.

Q. And you did not look at voter turnout?

A. No. I made that point earlier.

Q. Okay.

A. I don't believe that voter turnout is a characteristic of a district.

MR. DEVANEY: Could we mark this one as --my only copy of this.

(Exhibit No. 13 was marked.)

MR. MELLETT: That I do not have a copy of. Sorry.

MR. DEVANEY: Okay.

Q You can keep it. A. I can keep it?

Q. Yeah. Yeah. A. Okay.

Q. Would you, just for the record, identify what that is?

A. This is a news article from "Politico." I guessit's a newspaper. It's really just an online publication. April 4th of 2011.

Q. And can you generally describe the topic? I'll ask you a question.

A. Sure.

Q. It talks about a dispute between Congressman Barton and Congressman Smith. At least, what the article purports to be a dispute.

A. What do you want me to talk about? What do you want me to say?

Q. I just want the record to reflect generally what this is about.

A. Yeah. The headline is Smith, Barton in Texas Map Dust-Up."

Q. And you can read it, if you would like. Maybe you are familiar with it already. Let me know if you want to read it. I can pause why you do that.

A. I need to refresh what the article actually said. I know what the article is referring to.

Q. Why don't you take a minute and just let me know when you're ready.

A. Sure. Okay.

Q. First of all, is this an e-mail from you to - - is it Congressman Smith?

A. Well, actually it started out as an e-mail from the congressman's press secretary to his chief of staff, who sent it to me, and then I sent it to Geraldo Interiano, not Lamar Smith.

Q. Why did you send it to Mr. Interiano?

A. As with the Swing State Project, other things, I tend to try to keep people informed.

Q. Now, I'm obviously summarizing here. You can correct me as you see fit.

A. Sure.

Q. But as I read that article, the "dust-up" that was referred to describes a disagreement between Barton and Smith with Barton wanting either zero or one minority opportunity districts and Smith being of the view there should be at least two minority opportunity districts of the new districts in Texas.

A. I'm trying to recall. Here's the problem: I don't want to reveal any confidential communications between either Mr. Barton and me or Mr. Smith and

me. So to the extent that that information is public, that seems to be correct.

Q . Is it true that Congressman Smith wanted two districts of the four districts that were going to be created based on the 2010 Census data, that were minority opportunity districts?

A. The delegation proposal actually had three new minority -- or Hispanic opportunity districts. That's 34, 35 -- oh, I'm sorry. We numbered them differently.

Q. By the way, to be clear -- A. I might be wrong on that.

Q. I'm focusing on the four new districts.

MR. MELLETT: Should be Exhibit 1.

THE WITNESS: Because we've been through 85 maps. I can't keep the numbers straight for the districts.

Here's the overall map. Well, the numbering is different, but is it a - - let's take Congressman Smith's narrative up front here, is we have a new Voting Rights Act district in the Dallas-Fort Worth area, and that was not desired by Congressman Barton.

Q. And do you know why -- did Congressman Smith desire it?

A. He presented it to the Legislature, so I would presume so.

Q. Okay. And what opposition did Congressman Barton express to it, that you're aware of, that wouldn't violate attorney/client privilege?

A. Well, this news article would tend to indicate that he didn't think that it was necessary to create that district in DFW. And I would agree with him, from a Voting Rights Act perspective.

Q. The article also says that Congressman Smith felt that new districts in Dallas-Fort Worth and Houston were justified by - - I think the words are "surging growth in Hispanic population."

Do you agree with that statement?

A. I don't think he said Houston. Maybe he did, and I didn't.

Well, apparently the news article says Houston, but I don't recall them ever saying Houston.

Q. You just recall them saying Dallas and Fort Worth as a new opportunity district?

A. Yeah. I don't want to -- this is the only article I've seen Houston as a minority/majority -- a new district - - what does it say? "Acknowledging Texas surging Hispanic population will gain minority/majority state seats in the Dallas and Houston areas."

I don't recall him ever saying that publicly.

Q. So again, without violating attorney/client privilege, was Congressman Smith ever supportive of a new minority opportunity district in Houston?

A. I know of no statements to that effect.

Q. How was this disagreement between Congressman Barton and Congressman Smith ultimately resolved?

A. I don't know that it has.

Q. Well, we have a final map. So someone either prevailed or it didn't. As you look at the final map, do you have a view on whether Congressman Barton's view prevailed over Congressman Smith's?

A. Well, it seems that the Legislature implemented a map that did - - had a new -- did not have a new minority/majority district in Dallas-Fort Worth area.

Q. What is your understanding of why that was the result. Why wasn't there a district created in that area?

A. The votes weren't there to create one.

Q. Now, I believe you said in the map you originally drafted, there was a district in Dallas-Fort Worth. Correct?

A. There was a minority/majority district, yes.

Q. Yeah, thanks for correcting me.

A. There's a lot of districts in Dallas-Fort Worth.

Q. Yeah, I know. Could you pull Exhibit 1 and just show me that district?

A. Sure.

Q. For the record, describe, if you would, the shape of the district.

A. It connects Irving, Grand Prairie, Cockrell Hill, along -- I don't think it shows it on the map, but it should be 183, State Highway 183, I guess it is, that runs east-west across the county line between Dallas and Fort Worth and then goes west along -- I believe it's 183. Or in the area between IH-30 and 183, that's probably the best way to describe it, and it connects the northwest portion of Fort Worth and

the portion, I guess, east of downtown Fort Worth, both north and south, on the east side of Fort Worth, together with the portion I described earlier, Grand Prairie and Irving and Cockrell Hill.

Q. Do you recall what the minority makeup of that district was, both in terms of population and CVAP and HVAP?

A. Sure. We addressed this specifically earlier when we went through 33 statistics with Mr. Hebert. But it was 66 percent total Hispanic population, 16 percent total non-Hispanic black population, 61 percent black voting-age population -- I'm sorry. Strike that. 61 percent Hispanic voting-age population. 17 percent black voting-age population, with a Spanish-surname voter registration of 34 percent.

Q. And you said, I think, that the district could not be created, an opportunity district, in Dallas-Fort Worth because there weren't enough votes. What did you mean by that?

A. Well, the adoption of a redistricting plan, like any other legislation, requires a majority vote of both House and Legislature.

Q. Okay. It wasn't a makeup of a district. It wasn't as though you couldn't create a district; just that there weren't enough votes in the Legislature to pass the district you created?

A. You can create a minority opportunity district, but you can't create a majority Hispanic district. Majority Hispanic citizen voting-age population district. That would be a more accurate to say that.

Q So to summarize what I think I'm hearing phrased, you created initially a majority opportunity district in Dallas-Fort Worth, presented it to the Legislature, and there were not enough votes in the Legislature to pass a plan containing that district.

A. You are correct.

Q. Okay. Do you have 185?

MR. MELLETT: Yeah, right here. I didn't mark it as an exhibit because we were using it as a demonstrative.

MR. DEVANEY: We might as well mark it 14. (Exhibit No. 14 was marked.)

Q. (BY MR. DEVANEY) Mr. Opiela, I want to ask you about District 26.

A. Go ahead.

Q. Looking at District 26, you'll see there is an extension of the district down into Tarrant County.

A. I'm familiar with it. You can't really tell it on this. But, yes, I'm familiar with it.

Q. Okay. Want to see it here?

MR. MELLET: Yes.

Q. (BY MR. DEVANEY) Was that in the benchmark plan, or is that a change brought about by 185 to District 26?

A. There is a -- there is a structure similar to that in the benchmark plan.

Q. Did the structure change under C185?

A. Yes.

Q. How did it change?

A. It was shifted slightly west.

Q. And do you know why that change occurred?

A. I am trying to think if I know, if I was ever communicated to by anyone, other than my clients, any rationale for that. I'm trying -- I didn't want to run into the same trap Iran into before lunch. I know why certain features of that exist, and I can tell you that.

Q. Why don't you tell us that.

A. Because there's public record to this. Okay. The structure that looks like the delegation proposal on the west side of that finger -- I guess you might call it -- going down, is also reflected in the Delegation proposal, and the reason for the shape of that is because there is a project called the Trinity River Project that Congresswoman Granger has had the privilege, I guess, of shepherding through Congress the federal funding associated with the Trinity River, and it follows, that's the shape of the Trinity River as it goes through. So that's the unique kind of up-and-down shape associated with that.

I have no clue why the bottom of that district is shaped the way it is. That was never communicated to me by Ryan or Geraldo or anybody like that. However, the downtown area is shaped the way it is because on a previous iterations of that map, Congresswoman Granger's district office had been taken out of her district, so the connection had to be rerouted. So I am familiar with the why the shape is that way.

DECLARATION OF CHARLES A. GONZALEZ

October 17, 2011

I, Charles A. Gonzalez, declare under penalty of perjury to the following facts, which are based on personal knowledge:

1. I am over the age of 18.
2. I reside at 132 W. Summit, San Antonio, Texas 78212. Under the existing congressional plan, I reside in Congressional District 20. Under the State's plan and some of the other parties' proposed congressional maps, I will no longer reside in Congressional District 20.
3. I currently represent Congressional District 20 in the 112th Congress, having been first elected in 1998. My congressional office is located at 727 E. Cesar Chavez Blvd, San Antonio, Texas 78206. Under the existing congressional plan, my office is located in Congressional District 20. Under the State's plan and some of the other parties' proposed congressional maps, my office will no longer be located in Congressional District 20.
4. The State's proposed map, as well as some proposals submitted by other parties, ignore the historical, cultural, social, and economic interests of the people of the City of San Antonio and Bexar County. In its present form, Congressional District 20 is the only congressional district self-contained within Bexar County, which is significant and relevant to the character of Congressional District 20 as a Hispanic opportunity district and the ability of Hispanic voters to be

effectively represented by the elected U.S. Representative of their choice.

5. Congressional District 20 was the first Texas congressional district to elect an Hispanic to the U.S. House of Representatives on November 4, 1961, in a special election. My father, Henry B. Gonzalez, was proud to serve this district for 37 years. With population growth and evolving legal requirements, Congressional District 20 has maintained its Hispanic opportunity character, and has always been configured to remain wholly within Bexar County to include the city's major cultural, social, governmental, and economic centers.
6. Cultural landmarks include HemisFair, Henry B. Gonzalez Convention Center, The Alamo, Riverwalk, San Fernando Cathedral, La Villita, Market Square, Alameda Theater, Main Library, Municipal Auditorium, San Pedro Park, Brackenridge Park, Witte Museum, Basilica of the Little Flower, and Avenida Guadalupe. These landmarks have long been a part of Congressional District 20. Under the State's proposed plan, however, they are all excised from this district.
7. Of social importance are neighborhoods such as Prospect Hills, Tobin Hills, and Beacon Hills. The oldest high schools with special significance to all of San Antonio but especially to Hispanics are Lanier HS, Louis Fox HS, and Brackenridge HS. Under the State's proposed plan, these neighborhoods

and schools will no longer be located in Congressional District 20.

8. Seats of local government represented by City Hall and the County Courthouse have been an integral part of Congressional District 20. The Federal Building and the H. F. Garcia FederaJ Building have housed the offices of every U. S. Representative from Congressional District 20 from the first day these structures were built. The Federal Courthouse, where these proceedings are being held, (as well as its previous and future locations), has been central to Congressional District 20. Federal, county, and city law enforcement headquarters have also been similarly historically located in this district. None of these buildings, however, remain in Congressional District 20 under the State's proposed plan.
9. Congressional District 20 has always been comprised of economic generators and centers of commerce and education. Some of these entities include all downtown tourist attractions, Greater San Antonio Chamber of Commerce headquarters, CPSEnergy central location, VIA (public transportation), UTSA Downtown Campus, San Antonio College, University of Texas Health Science Center, Audie Murphy Veterans' Hospital, Lackland Air Force Base, Wilford Hall Ambulatory Surgical Center, Port San Antonio, National Guard and Reserve units located at the former Kelly AFB and cyber-security operations. Of further consideration is that the

VIA/City/County proposed streetcar and economic development plan, both the East/West and North/South proposals and VIA's planned intermodal center are in the heart of the present Congressional District 20 but would be excised by the State's plan and similar proposals.

10. Legal principles of compactness and communities of interest are ignored by the State's plan as well as some other proposed maps. Of added significance is the conflict of interest that any map that eviscerates the character of the present Congressional District 20 will present to anyone attempting to reconcile competing constituencies. Federal investment in any congressional district is limited by available resources and attendant budgetary constraints. Whether in the form of grants, loans, or policy proposals, federal initiatives inure to benefit local and private entities. To date, the U.S. Representative from Congressional District 20 owes allegiance only to constituents residing within Bexar County. That Representative does not have a split allegiance to a "competing" constituency located in another major city or county. Whether it involves education, energy, transportation, water resources, biomedical industries, tourism, military installations, or the technology sector, the Congressional District 20 representative today works solely with a Bexar County/City of San Antonio-based Commissioners Court, City Council, college presidents and business, social and

civic leaders to identify priorities and in a unified fashion, promote local interests.

11. Neither dismantling the historical core character nor the retrogression of Congressional District 20 is necessary in achieving the creation of more minority-influence congressional districts. The issue should not be about a political advantage for any particular political party or specific candidate. It should not only be about maintaining the ability of Hispanics to effectively elect aU. S. Representative of their choice, but also about assuring that they are effectively represented. Cutting off the minority population from the district's economic, cultural, and educational centers, while simultaneously dividing the district between two major urban areas, only reduces the ability of Congressional District 20's Hispanic population to have a meaningful vote.

DATED: OCTOBER 17, 2011

EXCERPTS FROM TRANSCRIPT OF ORAL DEPOSITION OF DOUGLAS DAVIS

October 18, 2011

* * * districts, which could implicate, depending upon which district you're looking at, Section 5.

Q. Okay. So, but the ultimate -- the ultimate inquiry under Section 5, in your view, is you can't retrogress existing districts. So the way you create new districts, you got to do it in a way that doesn't retrogress existing districts; is that correct?

A. No, that's not correct.

Q. Correct me then.

A. The state cannot retrogress off the benchmark statewide. That's Section 5.

Q. Okay. And so that means you look at how many districts or minority opportunity districts on the benchmark and compare it to how many there are under the new plan; is that correct?

A. Yes.

Q. And if, for example, there's one less under the new plan, then you have retrogression. If it's equal, is there retrogression in your view?

A. If it's equal?

Q. Yeah.

A. equal. No. There can't be retrogression if it's

Q. What if the number of seats have increased but the number of minority seats -- strike

that. What if the overall number of seats is increased but the number of minority seats remains the same, does that still mean there can be no retrogression under your view of Section 5?

A. Certainly.

Q. So just to be clear, so I want to make sure I understood your answer.

A. You're not going backwards.

Q. So in this case, then, we have four new seats, and it would be your view that you could give none of those seats to minorities and still have no retrogression as long as the number of minority seats remain the same as it was under the benchmark plan?

MS. JORDAN: Object to form.

A. I believe if you start with three minority opportunity seats and you end with three minority opportunity seats, you have not retrogressed.

Q. (BY MR. DEVANEY) Even if you have four new seats?

A. Even if you have 20 new seats.

Q. Okay. And –

A. You haven't gone backwards.

Q. Okay. And what's that understanding based upon? You're the lawyer. You're advising the people who are drafting this plan. I want to know, as counsel for them, and they relied on you, I'm sure, where did you come up with your conclusion that you just described?

A. I believe it's Georgia versus Ashcroft is the was the preeminent case on that, but I haven't been to law school in some time, but just from -- that' what I believe to be the case. If that's not the case, I stand corrected, but that's what I believe to be the case.

Q. And but to the best of your understanding, you conclusion is based on Georgia v. Ashcroft?

A. Well, or some -- some law. I thought it was Georgia versus Ashcroft, but it may or may not be. And I could be wrong. I didn't do this ln a vacuum. There's plenty of lawyers looking at this program.

Q. Oh, and there still are.

A. We had every indication that we would be sitting in these chairs come this time of the year, so there's plenty of people looking at this.

Q. Changing the subject to a possibility of a minority opportunity district in Dallas-Fort Worth, you-- you testified in your deposition that you didn't think it was possible to create a minority opportunity district in Dallas-Fort Worth. Is that a fair characterization?

EXCERPTS FROM RYAN DOWNTON'S SWORN TESTIMONY

September 9, 2011

MS. PERALES: That was at the request of the Court. I am not sure if we are planning to move the admission of all the depositions, but we did provide them to the Court, and I guess we will come up with a decision about which ones we want to move into the record.

JUDGE GARCIA: Okay.

MS. PERALES: So we don't have to make it too unwieldy.

MR. MATTAX: Very good.

JUDGE GARCIA: okay. Who—you are presenting this witness?

MR. MATTAZ: Yes.

JUDGE GARCIA: And who else? And then what is next?

MR. GRAY: We will go back to Mr. Bledsoe and complete Dr. Murray, who was on the stand, Your Honor, and the NAACP and their witnesses will be taken forward.

JUDGE GARCIA: Okay.

MR. MATTAX: May I proceed, Your Honor?

JUDGE GARCIA: Yes.

COURTROOM DEPUTY: May I swear in the witness, your honor? Will you raise your right hand?

(Oath administered to the witness.)

COURTROOM DEPUTY: Thank you.

***

BY MR. MATTAX:

Q. Please state your name.

A. Ryan Downton.

Q. What was your role in the 2011 redistricting process?

A. I was general counsel to the Texas House Committee on Redistricting.

Q. And in that capacity, did you have a role in drawing either the congressional or the House map?

A. I did. I had two roles. One was to provide legal advice to the committee and its chairman, and the other was to assist in drawing the maps.

Q. Did Texas increase the number of congressional districts it was allowed to have after the 2010 census?

A. yes. We had 32 and moved to 36.

Q. Could I direct you attention to Defendant's Exhibit No. 43, which is displayed on the screen?

A. yes, sir.

Q. This is a demonstrative exhibit showing the population growth in the state between 2000 and 2010, and the darker the green areas, the more the population grew.

In determining where to draw these four new districts, was it important to determine where the population growth was.

A. Yes.

* * *

region that we are talking about, but within the south region, I believe they are all Latino majority districts.

Q. can you zoom in to 35, please? And this was the early version of 35, which I believe was the inspiration for the 35 and C-185; is that right?

A. that is correct.

MS. PERALES: And going back out just to South Texas, David.

By MS. PERALES:

Q. You had mentioned earlier about some rotating redistricting changes that you made with respect to creating the new 35 and its cascading impact on 20 and then 23, and the need to sort to make sure that each of them had a majority of Hispanic citizen voting age population; do you remember that?

A. kind of the reverse. After we created 35 and had drawn the initial map, there were concerns raised about 20. It was already over 50 percent.

Q. yes.

A. But there were concerns to raise it higher, and that necessitated changes.

Q. but you certainly had the ability to consider including Nueces County's Latino population in the South Texas configuration of congressional districts in order to provide sufficient population that you would not have felt pressure between creating the

new 35 and maintaining benchmark levels in CD-20 and 23; isn't that right?

A. We could have included Nueces and it was considered.

MS. PERALES: Davis, can you put up C-185, please.

BY MS. PERALES:

Q. Okay. Here is the adopted map. It is your position that the adopted map C-185 is legally compliant, because seven districts in south and central texas have over 50-percent Hispanic citizen voting age population, that's right?

A. I don't know what we needed seven, but it is my position there are seven latino opportunity districts in south and central texas, because the HCVAP is over 50 percent in each district.

Q. And even though you admit that one of these districts, West texas 23, elects the Latino-preferred candidate in only one out of ten elections; isn't that right?

A. that is correct.

Q. And it is your position that C-185 and a map like C-190 both create seven opportunity districts, that they are both legal, but the difference is a political choice in C-185 to accomplish political goals; is that correct?

A. yes.

Q. And you believe while mapping that if the congressional plan you created did not have an additional Section 2 district in south and central Texas that a court have a problem with that, and

that there was some legal risk if there wasn't an increase; isn't that right?

A. We thought there was a potential risk, yes.

MS. PERALES: I think, Sarah, if you can get back to your computer.

BY MS. PERALES:

Q. So while you were working on the congressional map, you communicated with Mr. Opeila; is that right?

A. That is correct.

Q. And you understood that mr. Opeila, that he was speaking on behalf of the republican congressmen from Texas, with the exception of representative barton; is that right?

A. that is correct.

Q. and he submitted plans to you, and some of his ideas were incorporated, yes?

A. yes.

Q. And he expressed the following concern to you about congressional district 23, that there was a newly elected republican congressman who wanted to have a chance to be reelected, as did the other congressman?

A. I think that is far, yes.

Q. And you attempted to accommodate Mr. opeila's concerns on behalf of the delegation about the 23rd district, yes?

A. yes

Q. While still creating what you thought of as a legal map?

A. yes.

Q. And one of you goals in drawing CD-23 was to allow congressman Canseco to have the opportunity to be reelected?

A. Yes.

Q. In fact, you phrased it as giving Mr. Canseco his best chance to be reelected, while maintain or increasing the Hispanic percentages, total population Hispanic voting age, Hispanic voting age, and Spanish surname voted registration, correct?

A. yes. We wanted to make sure that we complied with the voting Rights Act and felt that that needed to eb done to comply.

Q. And you also wanted to draw Mr. Canseco's house into Congressional District 23, yes?

A. yes. He requested that and we were able to accommodate him.

Q. So as you were drawing CD-23, through the amendments and to its final version, you were comparing the political performance of the evolving 23 to how to have been in the benchmark, correct?

A. I am not sure about that. We were definitely looking at the political performance of 23 with respect to specific races and also a weighted average of races.

Q. go ahead and grab your deposition, volume 1, page 39. Take a look at lines 15 through 23, where

we talked about what you were looking at while 23 was evolving, as you were crafting it.

Do you see you were watching it and its political performance compared to how it had been in the benchmark; is that right?

A. Yeah. That is how I answered your question. I think that what I said today is probably more accurate about the comparisons.

Q. And when you were drawing the new congressional district 23, you would track the changes with a running table in red appl of various statistics for the district, including total population, deviation, Spanish surname voter registration; is that correct.

A. as we were drawing is—we kept lots of statistics including some of those and at times all of those.

Q. and I understand that when you are in red appl, you can have both a running table that appears on the screen, as you are making the changes, and that table is updating itself in the moment, and then there are also reports that you can send to map somewhere and get some reports back; is that right?

A. yes. Some statistics are available to us all the time, and we keep a lot of them on the screen all the time, but HCVAP was not available to us. We had to request that report from leg. Counsel.

EMAIL FROM CONGRESSWOMAN KAY GRANGER'S STAFF MEMBER, MATT LEFFINGWELL PRODUCED BY ERIC OPIELA

June 8, 2011

From: Eric Opiela [eopiela@ericopiela.com]
Sent: Wednesday, June 08, 2011 9: 23AM
To: Ryan Downton; Gerardo Intertano
Cc: CLS Smith
Subject: Fwd: Changes to CD 12

Heads up.

Charlie Geren is going to offer an amendment to Plan C144 to put downtown Fort Worth back in the Fort Worth Congressional District rather than the Denton County Congressional district. Easy fix, you just have to keep the transit East ofiH 35W and go under I30.

EO

Begin forwarded message:

From: "Leffingwell, Matt"
<Matt.Leffingwell@mail.house.gov>

Date: June 8, 2011 9: 07:53 AM COT

To: "'Eric Opiela'" <eopiela@ericopiela.com>

Subject: RE: Changes to CD 12

Our office that is located on 7th and Jones street in downtown Fort Worth was drawn out. There is no population there. We told Charlie Geren about this problem and he said he would work on this today but this has to be corrected.

EMAIL FROM CONGRESSMAN KENNY MARCHANT PRODUCED BY ERIC OPIELA

May 31, 2011

From: Eric Opiela [eopiela@ericopiela.com]
Sent: Tuesday, May 31, 2011 118 AM
To: Ryan Downton; Gerardo lnteriano
Cc: lamarsmith21@gmail.com camp
Subject: Fwd: Special Session Proposed Map CD 24
Please see below; if possible. Thanks

EO

Begin forwarded message

From: Kenny Marchant <marchantken@gmail.com>
Date: May 31,20111:10:30 AM COT
To: Eric Opiela <eopiela@ericopiela.com>
Subject: Re: Special Session Proposed Map CD 24

Eric, one change, it's easy, no population. My grand babies go to Hockaday School on forest lane AND Inwood. I have the north side of forest , Pete has the south side Please go across the street and pluck the campus out of Pete and put in my district There will be nopopulation this agreeable and I will ask Burt to do it Thanks km

Sent from my iPad

On May 31, 2011, at 12:12 AM, Eric Opiela <eopiela@ericopiela com> wrote:
Congressman Marchant-

The House and Senate have reached a compromise between their congressional redistricting maps today. The House and Senate consensus

congressional proposal will likely be released today; Congressman Smith wanted me to describe your district under the proposal to you. Note that the House and Senate are still working on minor changes, and I will update you if your district changes. CD 24 will be 58.4% McCain and will contain the following counties (100% unless otherwise noted): Dallas (14%-330,826), Denton (17%-112,782), and Tarrant (14%-254,880). As we discussed today, it's largely the same district proposed in the delegation proposal.

Please let me know you received this and do not hesitate to call or email if you have any questions.

Eric

Excerpts from Report on Minority and White Representation and Voting Patterns in the Texas Congressional Plan C185

Stephen Ansolabehere
Professor of Government
Department of Government
Harvard University
Cambridge, Massachusetts

August 8, 2011

Two lines of defense of this configuration of Texas' Congressional Districts are that either (I) racial differences are of little consequence, or (2) the large number of White majority districts was unavoidable. We will address each concern in tum. The next section of the analysis examines voting patterns in the state ofTexas and shows that the racial groups vote cohesively in nearly every part of the stale and that Hispanics and Blacks prefer very different candidates from Whites. Hence, the configuration of districts in Plan C 185 will frustrate the ability of Blacks and Hispanics to elect their preferred candidates. The second argument concerns the demography and geography of the state: was it in fact possible to construct a coherent map that provided for more representation without violating other principles, such respect for county boundaries? The subsequent section of the report compares Plan C I 85 with alternative plans introduced to the legislature. These comparisons reveal that it was in fact possible to have more minority opportunity seats than in Plan C 185, without dividing counties further or creating greater degrees of partisan bias.

B. Race and Voting Patterns in the State of Texas

District lines may have little consequence if the people in the various ethnic and racial groups have similar political views, tend to vote for the same candidates, or tend to split their votes evenly between competing candidates. If all racial or ethnic groups expressed similar political orientations or chose the same candidates, then almost any map of Congressional Districts would yield similar election outcomes. The configuration of district Jines becomes consequential for minority groups when racial and ethnic groups have different political preferences. A district plan magnifies the representation of a group, in this case Whites, if that group is sufficiently concentrated in districts that it is the majority of disproportionately many districts, and tbat group prefers different candidates from the other groups, in this case Hispanics and Blacks. Likewise the dispersion of the majority of Hispanic and Black voters across many districts in which they are the minority would, then, mean that the ability of these voters to elect candidates that they prefer would be greatly diminished, compared with White voters.

The Congressional District plan enacted into law clearly magnifies the value of the vote of Whites. Under Plan C185, Whites are a plurality of the state with 45 percentof the population, and whites are a majority of 60 to 70 percent of the districts, depending on which measure of the eligible electorate one uses. Hispanics comprise 36 percent of the population and Blacks are 12 percent; these groups are a combined 48 percent of the population.

Ye[they are a plurality or majority in just 25 to 30 percent of Congressional Districts under Plan C J 85, depending on the measure of eligible electorate used.

In this section, we examine past voting patterns and find that Whites express very different preferences for candidates than Hispanics and Blacks do. Using Homogeneous Precinct Analysis and Ecological Regression, we compare the voting patterns of areas that where there are more White persons of voting age with areas where there are more Black persons or more Hispanics of voting age. This analysis reveals that the racial groups in this state vote as cohesive bloc, and that there are high degrees of racial polarization. These analyses suggest that Whites vote for one type of candidate at least 70 percent of the time, on average. On average, 75 percent of Hispanics and more than 90 percent of Blacks vote for a candidate other than the one chosen by the vast majority of Whites or by predominantly White areas. The one exception to this pattern arises in Travis County, where Whites are more evenly split between the parties and between the candidates preferred by Whites elsewhere in the state and the candidates preferred by Hispanics and Blacks in Travis County.

The Supreme Court approved the use of Ecological Regression and Homogeneous Precinct Analysis for estimation of racial bloc voting and racial polarization in Thornburgh versus Gingles 478 U. S. 30 (1986) and the application of these methods to single-member districts in Quilter v. Voinovich 507 U.S. 146 (1993) and Growe v.Emison 507 U . S. 25 (1993). Here we present tbe result of ecological

regressions and homogeneous precinct analyses for elections in the state of Texas. The goal of this analysis is to examine the extent to which racial groups express different political preferences, and whether a large majority of Whites are opposed to a large majority of non-Whites. We do not infer from this analysis that Democrats represent the preferences of Hispanics or Blacks perfectly, or that Republicans represent the preferences of Whites perfectly. Rather this analysis is evidence that the groups have substantively different preferences and that district boundaries will affect the ability of individuals in these groups to elect candidates of their choosing.

Ecological regression and homogeneous precinct analysis measure the voting preferences of the typical person in a group by examining the effect of the racial composition of local areas (precincts or Voting Tabulation Districts in Texas) on the share of the vote won by one of the two major parties. Homogeneous precinct analysis examines those Voting Tabulation Districts or precincts that consist of at least 85 percent from one racial or ethnic group. We measure the average share of the vote won by a given party in the homogeneous White precincts, the homogeneous Hispanic precincts, and the homogeneous Black precincts. We take each of these quantities as the estimated probability that White, Hispanic, or Black person will vote for a given party, say the Republicans.

Ecological regression estimates the same quantity, but it uses all precincts and Voting Tabulation Districts. This analysis begins with a simple graph of vote share (on they-axis) against

percent of a given race (White, Hispanic, or Black on the x-axis). Vote share is the dependent variable and race is the independent variable. Regression estimates the best fitting line (or plane) to the relationship between vote share and percent of a given race or ethnicity. In the case of three or more racial groups, the analysis has multiple independent variables (percent White, percent Hispanic, percent Black, etc). From the estimated line (or plane) one can calculate predicted values, which equal the expected share of the vote for a party given a certain racial composition of the area. Setting percent White equal to I and other races equal to 0, we can generate the expected share of the vote in an area that consists entirely of Whites (a homogeneous precinct).We can perform similar calculations for other racial groups. These are the estimates of "bloc" voting, or the extent to which a group expresses a cohesive political preference. If a group votes 50-50, then the cohesion is minimal. lf a group votes entirely with one party, it is highly cohesive. The differences between groups measure the polarization. Of particular interest is the difference between predicted white voting behavior and Hispanic or Black voting behavior.[9]

We performed ecological regressions for Whites versus Non-Whites and for four racial groups,

Whites, Hispanics, Blacks, and Others. Because we wish to distinguish Hispanics and Blacks we present the latter analysis here. In addition, we examined different measures of the vote, including

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[9] For further discussion of this method see Allan Lichtman Ecological Inference (Beverly Hills, CA: Sage, 1978).

the Republican share of the two party vote for President in 2008, the Republican share of the two party vote for Governor in 20 I 0, and the average Repubican share of the vote in all federal and state level races over the past decade, or the Republican Normal Vote. The results were very similar with the different dependent measures (e.g., Presidential Vote in 2008, Governor Vote in 2010, or Republican Normal Vote). We focus on the Republican Normal Vote because it includes the other indicators and because it averages over idiosyncratic characteristics of particular elections.

Results of the Ecological Regression and Homogeneous precinct polarization analysis are in Table 4. The estimated coefficients and standard errors and other statistics of these models are contained in the appendix. The first column in the table shows estimated Republican vote shares within each group and polarization. The top panel corresponds to the predictions of Ecological Regression, and the bottom, the Homogeneous Precinct Analysis.

Both analyses point to the same conclusion. Areas that are overwhelmingly White vote 70 to 80 percent Republican. Areas that are overwhelmingly Hispanic or Black vote overwhelmingly Democratic. Hispanic areas mirror White areas, with 70 to80 percent voting Democratic. Areas with large numbers of Black voting age population vote over 90 percent Democratic. These imply that the racial groups vote very cohesively as blocs. They further show high polarization rates: roughly 50 points between Whites and Hispanics and in excess of 60 points between Whites and Blacks.

These statistical models make an important assumption, that the coefficient measuring the propensity of a given group to vote Republican does not vary across geography much or in a way correlated with race. To test that assumption we replicate the Homogeneous Precinct analysis within the largest counties. Not all counties have Voting Tabulation Districts in which more than 85 percent of the YAP are White, Black, or Hispanic. Comparing across the counties reveals that the voting behavior of the groups is fairly consistent from one part of the state to the next, with the exception of Travis County. In Bexar, Dallas, Harris, and Tarrant, the homogeneous White precinctsvoted 71 to 78 percent Republican. rn Bexar, Dallas, El Paso, Harris, and Tarrant, the homogeneous Hispanic precincts voted 20 to 27 percent Republican. In Dallas, Harris, and Tarrant, homogenous Black precincts voted between 3 and 5 percent Republican. These counties are in different parts of the state and have quite different character and demography. Nonetheless, Whites in each of these metropolitan areas vote overwhelmingly Republican, while Hispanics and Blacks vote at least as strongly Democratic. This is clear evidence of bloc voting in the state and significant racial polarization. Against this background, the composition of districts can have dramatic effects on the ability of a group to elect candidates of their choosing.

Travis County breaks the pattern observed elsewhere in the stale. Although there are no homogeneous Black or Hispanic Voting Tabulation Districts, there are 25 homogeneous white precincts,

and those precincts look very different from homogeneous white precincts elsewhere in the state. In Homogeneous White Precincts in Travis County, the electorate divides 50-50 between Republicans and Democrats. The Ecological Regression analysis takes that into account by omitting Travis County and by performing a separate regression analysis for that county. The implied degree of racial polarization is noticeably lower in Travis than it is elsewhere in the state, and Whites do not appear to vote as a cohesive bloc in opposition to minorities in this county.

It is important to note that the Republican and Democratic vote are used to show that the racial groups in the state vote cohesively and are polarized. Party is not equivalent to group preference though. As a practical matter it is difficult to untangle party and race because the racial groups themselves have considerable influence inside the parties. Whites in Texas are the majority racial group in the Republican party in the slate, and Hispanics and Blacks account for most of the Democratic party. For example, according to the national exit polls conducted in Texas during the 2008 presidential election, 86 percent of the vote for John McCain in the state came from White voters. By comparison, 61 percent of the vote for Obama came from Hispanic voters and Black voters combined, and 39 percent came from White voters.[10]

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[10] Poll data for the Texas sample from the national exit polls are available at http:// www.cnn . com/ELECTION/200S/ rcsults/ polls/#vai=TXP00p I. Visited August 7, 2011.

The 2010 elections, however, reveal that the race of the candidate produces even higher levels of polarization across groups than occur in the typical race in the state. We examine three elections here. The first is the 20 I 0 Governor election between Rick Perry and Bill White, which Perry won 55 percent to 42 percent. This serves as a baseline comparison as it is a contest between two White candidates. The second is the 20I0 election for Lieutenant Governor between David Dewherst and Linda Chavez-

Thompson, which Dewhersl won 62 percent to 35 percent. The third is 2010 U.S. House election in the 27th Congressional District, in which Republican Blake Farenthold beat Democrat Solomon Ortiz 48 percent to 47 percent. The Lieutenant Governor election and the election for the 27th Congressional District provide comparisons with the governor election because these involve White Republicans against Hispanic Democrats, which offers insight into whether racial differences in voting are even greater when there is an Hispanic running. The 271 District is of particular importance in this report. The victory of a White Republican in an Hispanic majority district raises the possibility that Farenthold won with heavy cross-over voting from Hispanics. The surprisingly strong victory of Dewherst statewide over Chavez-Thompson raises the same possibility, as Dewherst's margin over Chavez-Thompson exceeded Perry's margin over White. The voting patterns, however, show that neither Farenthold nor Dewherst won with strong cross-over votes from Hispanics. Rather, the degree

of racial polarization was even higher than in the gubernatorial election.

Racial polarization was high in both statewide contests, for Governor and for Lieutenant Governor, and the comparison of the two reveals even higher polarization when an Hispanic runs on the Democratic label. In Homogeneous White precincts in the state, Rick Perry won 72 percent of the two-party vote on average. In the Homogeneous Hispanic precincts, he won 24 percent of the two-party vote on average. The race shows strong group cohesion and polarization of 48 percent. The race for Lieutenant Governor, conducted at the same time and in the same precincts, shows stronger cohesion and higher racial polarization. [n Homogeneous White precincts in the state, Dewherst won 81 percent of the two-party vote on average. In the Homogeneous Hispanic precincts, he won 24 percent of the two-party vote on average, for a polarization of 57 percent.

The same pattern emerges in the U. S. House election for the 27u. Congressional District in 2010. In the old 27th district (Plan C1 00), there is one homogeneous White Voting Tabulation District, in which approximately I ,500 people voted. In the Homogeneous White area, Perry won 66 percent of the two-party vote. There are 85Homogeous Hispanic precincts, and in these Perry won 28 percent of the vote, for a polarization of 38 percent. The election returns for Lieutenant Governor in these precincts show higher rates ofpolarization. Dewherst won 74 percent of the vote in the Homogeneous White areas and 27, a polarization rate of 47 percent or 9 points higher than in the Governor election. The election returns for the 271n

Congressional District parallel the results of the Lieutenant Governor contest. Farenthold received 71 percent of the vote in the Homogenous Vvhite areas of the old 271n district, but jus1 26 percent of the vote in the Homogeneous Hispanic areas, a polarization rate of 45 percent.

There are two implications of these comparisons. First, the success of Republican candidates in the state is not evidence of significant levels of cross-over voting among Hispanics. The 2010 elections for Lieutenant Governor and the 27u.. U. S. House seat exhibit racial polarization much higher than the rates observed in the typical election in the state. Second, even though party and race are correlated and hard to untangle, race appears to affect voting in ways that go well beyond party. Racial differences in voting patterns are even greater in the recent elections in which Hispanic Democrats competed against White Republicans.

In short, there is clear evidence of racial bloc voting and polarization throughout the state of Texas. Setting Travis County aside, White Non-Hispanics vote cohesively, and typically a large majority of White Non-Hispanics chooses one candidate and a large majority of Hispanics and Blacks chooses the opposing candidate. That difference appears even higher when Democrats nominate an Hispanic candidate. The disproportionately large number of majority White U. S. House districts created by CJ 85 will likely magnify the ability of whites to elect candidates of their choosing. Likewise, the dispersion of Hispanics and Blacks into districts in which they are neither the plurality nor the majority means that the

majority of Hispanics and Blacks will have far fewer opportunities than do the majority of Whites to elect candidates of their choosing.

C. Comparison with Alternative Plans

C.1 . Racial Comparison with Plan C166

One key question concerning C185 is whether it was possible to draw a plan that had more majority Hispanic and Black districts. The creation of disproportionately many White majority districts might have been unavoidable. There are two common variations on this argument. First, there may be sufficient mixing of the racial and ethnic groups geographically that it is impossible to create many districts that are majority Hispanic or Black and that have equal populations. Second, it may have been possible to draw a map that created more majority Hispanic or Black districts, but that may have violated some other standard. It may, for example, have created a plan with higher levels

Ecological Regression Estimates (see Table 4)

Republican Share of Vote

Variables	Normal Vote	Pres. 2008	Gov. 2010	Normal Vote w/o Travis	Normal Vote w/ Travis
White Non-Hisp	0.149 ***	0.693 ***	0.437 ***	-.05	-.21
As % of VAP	(0.0220)	(0.0223)	(0.0241)	(.02)	(.8)

Black Only	-0.644***	-0.210***	-0.399***	-.77***	(-.72)
As % of VAP	(0.0230)	(0.0233)	(0.0252)	(.02)	(.23)
Hispanic	-0.380***	0.102***	-0.0924***	-.49***	-.57***
As % of VAP	(0.0216)	(0.0218)	(0.0236)	(.02)	(.27)
Constant	0.658***	0.172***	0.372***	.77***	.73
	(0.0210)	(0.0212)	(.0229)	(.02)	(.16)
Observations	8,166	8,144	8,137	7,701	208
R-Squared	0.72	0.76	0.71	0.77	0.36

Standard errors in parentheses

*** p‹0.01, **p‹0.05, *p‹0.1

Note I: Ln the Ecological Regression model, the constant corresponds to the predicted voting behavior of the "other race" group, and the coefficients on the variables are the differences between a given group and the "other race" group.

EMAIL FROM CONGRESSMAN LAMAR SMITH PRODUCED BY ERIC OPIELA

June 8, 2011

Having probs w borrowed bkberry did u get my emails from last nite.

Smith, CLS <CLS.Smith@mail.house.gov>

Wed, Jun 8, 2011 at 7:25AM

To:eopiela@ericopiela.com <eopiela@ericopiela.com>, "rdownton@platinummri.com"<rdownton@platinummri.com>

Ryan Downton <rdownton1@gmail.com>

Wed, Jun 8, 2011 at 7:34AM

To: "Smith, CLS" <CLS.Smith@mail.house.gov>

Cc:"rdownton@platinummri.com"<rdownton@platinummri.com>,"eopiela@ericopiela.com"<eopiela@ericopiela.com>

I did not

On Jun 8, 2011 7 25 AM, "Smith, CLS" <CLS. Smith@mail.house.gov> wrote:

Smith, CLS <CLS.Smith@mail.house.gov>

To:"rdownton1@gmail.com" <rdownton1@gmail.com>

Wed, Jun 8, 2011 at 7:41 AM

Just talked to eo. He is emailing u. There is one pet which includes two condo buildings w many gop supporters and the sa country club adjacent to my dist. We'd really like to get. Joe Straus would approve! Eo says might help cd 35 to take out. Hope

can be amend. If u don't offer any amends then understand if u can't do.

From: Ryan Downton [mailto:rdownton1@gmail.coml

Sent: Wednesday, June 08, 2011 08:34AM

To: Smith, CLS

Cc:rdownton@platinummri.com<rdownton@platinummri.com>;eopiela@ericopiela.com<eopiela@ericopiela.com>

Subject: Re: Having probs w borrowed bkberry did u get my emails from last nite.

Smith, CLS <CLS.Smith@mail.house.gov>

To:"rdownton1@gmail.com" <rdownton1@gmail.com>

Wed, Jun 8, 2011 at 7:42AM

My

From: Ryan Downton [mailto:rdownton1@gmail.com]

Sent: Wednesday, June 08, 2011 08:34AM

To: Smith, CLS

Cc:rdownton@platinummri.com<rdownton@platinummri.com>;eopiela@ericopiela.com <eopiela@ericopiela.com>

Subject: Re: Having probs w borrowed bkberry did u get my emails from last nite.

EMAIL FROM ERIC OPIELA

May 30, 2011

From: Eric Opiela(eopiela@ericopiela.com]
Sent: Monday, May 30, 2011 7:30PM
To: lamarsmith21@gmail.com
Cc: Gerardo Interiano
Subject: Re:
Ryan Downton <rdownton@platinummri.com>

I don't think we mess with quico's district--for your sake and his. His is barely performing (or not depending on your measure) right now; add Rs (which will be Anglos)and you put a neon sign on it telling the court to redraw it. Bring down your numbers and you'll have a Dem opponent every time. And they won't be Lainey Melnick.

EO

On May 38, 2811, at 7:13 PM, lamarsmith21@gmail.com wrote:

> Do u have ryans email. Pls pass on. Wld it help quico on the margin if I gave him 3k more in bexar (either gop or hispanics)and took edwards co in exchange. Need to check demographics of edwards. If helps check w quico or scott.

>Sent via BlackBerry by AT&T

EMAIL FROM DUB MAINES

June 9, 2011

From: Corbin Casteel [wccasteel@mac. com]

Sent: Friday, June 10, 2011 10:35 AM

To: Gerardo lnteriano

Subject: Fwd: 9 Jun 11

Attachments: 9Jun11 . zip; Untitled attachment 01092.htm

any truth to this part?

"If DOJ objects, the Texas federal court grants legislative deference to the map passed by the Legislature and is required to remedy ALL ofDOJ's objections in its map . If preclearance is only pursued at DOJ there will be, most likely, a longer list of objections. If Texas foregoes DOJ preclearance and litigation is not completed in the DCDC, the Texasthree-judge panel cannot use the legislatively-enacted map and would be required to begin from the 2003 map as if this were a deadlock case "

Begin forwarded message:

From: Dub Maines <dubmaines@gmail.com>
Date: June 9, 2011 5:39:29 PM COT
To: Dub Maines <dubmaines@gmail.com>
Bee: wcc@casteelinc.com
Subject: Re: 9 Jun 11

I would like add a correction that I received on the message that I sent earlier

"If DOJ objects, the Texas federal court grants legislative deference to the map passed by the

Legislature and is required to remedy ALL of DOJ's objections in its map. If preclearance is only pursued at DOJ there will be, most likely, a longer list of objections.

If Texas foregoes DOJ preclearance and litigation is not completed in the DCDC, the Texas three-judge panelcannot use the legislatively-enacted map and would be required to begin from the 2003 map as if this were a deadlock case."

And another

"DOJ's punch list will grow exponentially if they know we have to make changes. Little things that they wouldn't have nit picked in a clean map will show up on the list because of the obvious retrogression and lack of new Hispanic seat."That having been said, is there any reason why every effort should not be made to make the map more likely topre-clear, especially if it doesn't hurt the political aims in any way ?

On Thu, Jun 9, 2011 at I:15 PM, Dub Maines <dubmaines@gmail.com> wrote:

I would really appreciate you looking at this modified Solomons/Seliger map. It is 26R and I OD, as is the one the House Committee just passed. However, the Committee-passed map badly retrogresses CD20 without creating a new VRA district. 1.035 is in no way a VRA district; it is a district that re-elects Congressman Doggett - whether he receives the support of Hispanic voters or not .

In the map I've sent you, CD25 is a heavily-Republican, Hill Country, West Texas district. CD20,

contains the southeast quadrant ofTravis Count y, has incumbent Congressman Charlie Gonzales in it , is heavily Bexar County, and is a legal, performing VRA district CD35 is an open seat and is a district from southern and central Bexar County to Webb County. It is a legal, performing VRA district

The Committee map, as passed, has next to no chance of pre-clearance - either by Justice or the DC circuit court. The map I've sent you has a very high probability of pre-clearing- at least in the DC court. This is the analysis of those who have practiced in the Voting Rights area- very successfully- for over 25 years. I would encourage you to speak with them about the Committee-passed map. They may be from evil DC, but they ARE the premier experts in this area, and I believe it would be prudent to entertain their thoughts on this map! There seems to be quite a bit of confusion about Section 5 pre-clearance. Section 5 is not like Section 2, in that Section 2 deals with existing maps and makes minimal changes to those existing maps, if the courts feel changes are needed. Section 5 pre-clearance decides if a map ever really "exists." If a map is not pre-cleared, then it is 'IS if nothing had ever been drawn. The courts will draw the map de novo as they did in 2001 . Doggett will be re-elected. Canseco will not be. Farenthold will not be. They will likely split the baby on the 4 new seats. The Ds pick up a net of 4 seats. The Rs pick up a net of zero seats. This idea of challenging the Constitutionality of Section 5 is high-risk poker with no discernible positive return.

Again, I would appreciate you importing and looking at this map. Please call on me if you have any questions, comments, or suggestions.

Thank you,

Dub Maines

972-898-6796

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DEC 21 2011
OFFICE OF THE CLERK

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,
v.
SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,
v.
WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,
v.
SHANNON PEREZ, ET AL.

On Appeal from the United States District Court for the Western District of Texas

JOINT APPENDIX, Vol. 5 of 5

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11-713, 11-714, 11-715, Appeal Docketed December 12, 2011
11-713, 11-714, 11-715, Probable Jurisdiction Noted December 9, 2011

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E-mail from Congressman Kenny Marchant Produced by Eric Opiela
May 31, 2011 ..... JA 964

Excerpts from Report on Minority and White representation and Voting Patterns in the Texas Congressional Plan C185
Aug. 8, 2011 ..... JA 966

E-mail from Congressman Lamar Smith
Produced by Eric Opiela
June 8, 2011 ..... JA 979

E-mail from Eric Opiela
May 30, 2011 ..... JA 981

E-mail from Dub Maines
June 9, 2011 ..... JA 982

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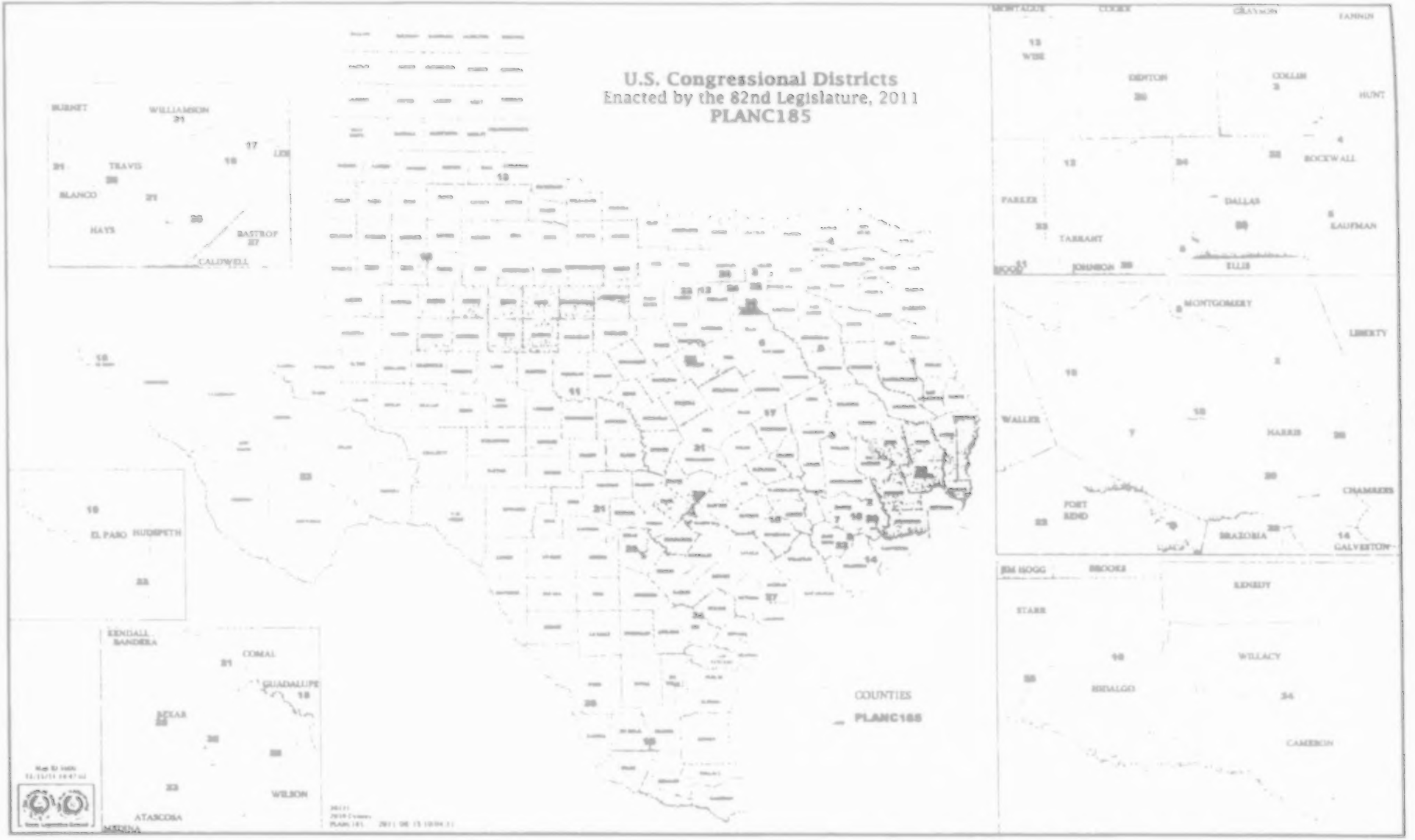
U.S. Congressional Districts
Enacted by the 82nd Legislature, 2011
PLANC185
COUNTIES
PLANC185
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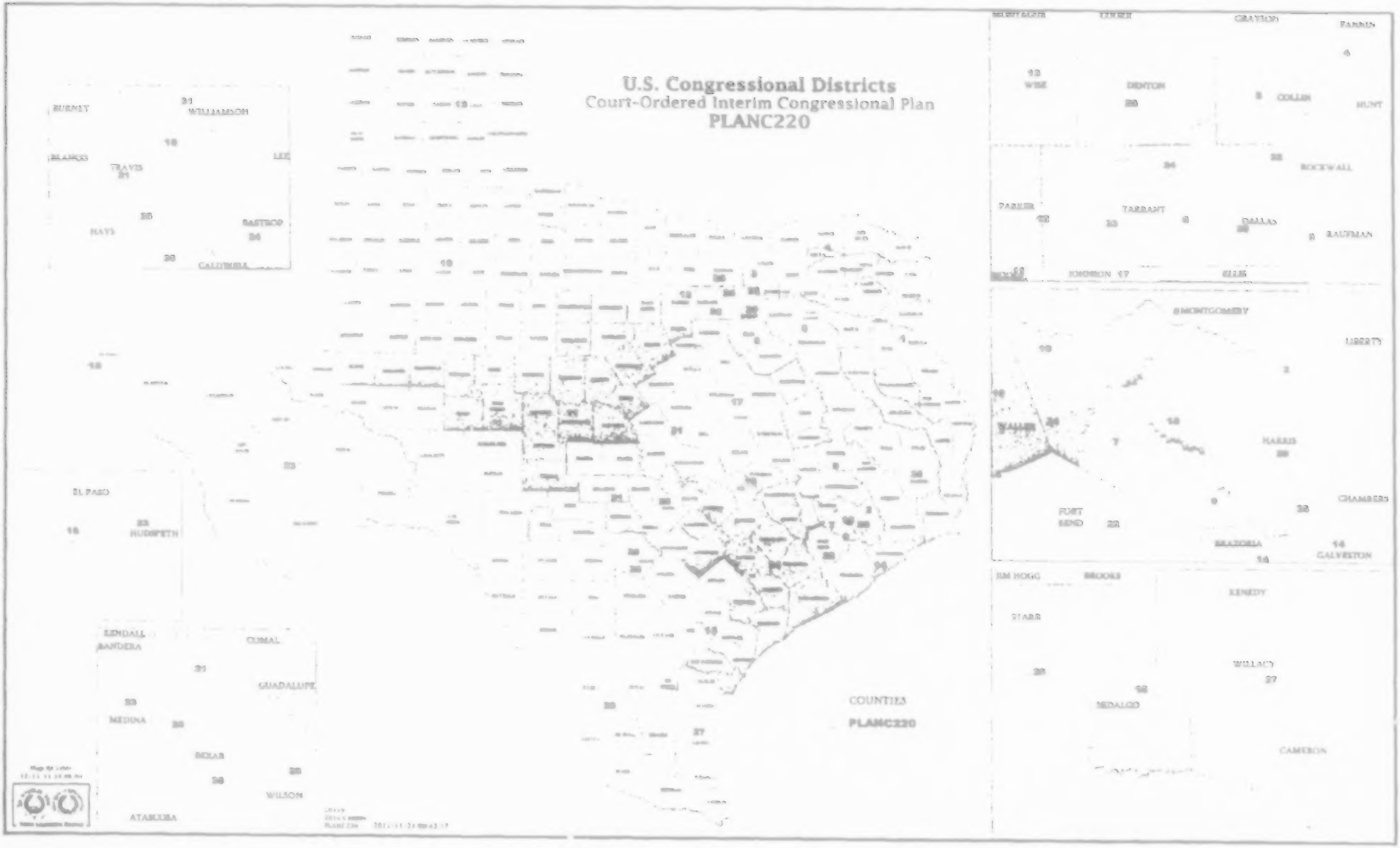
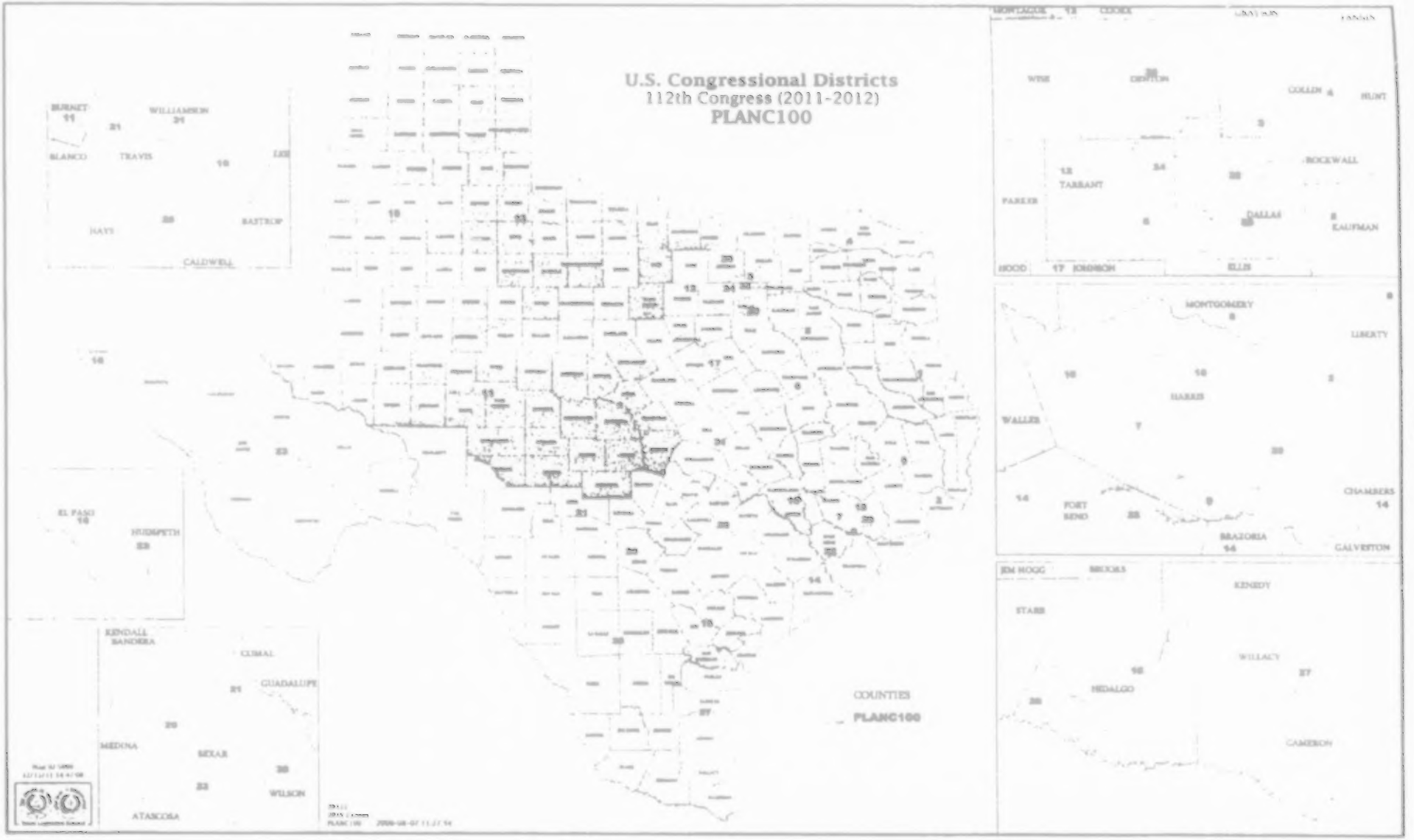
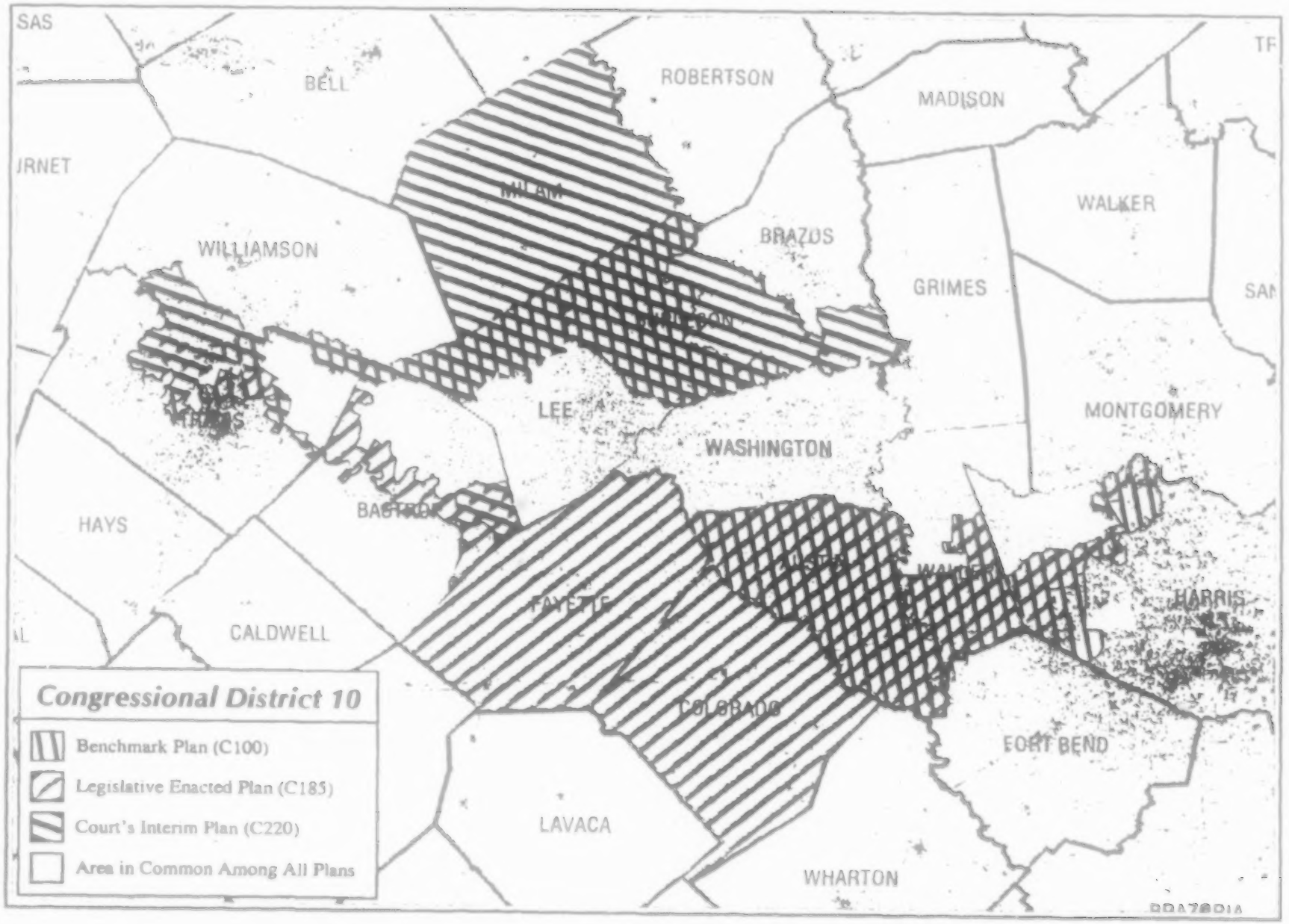
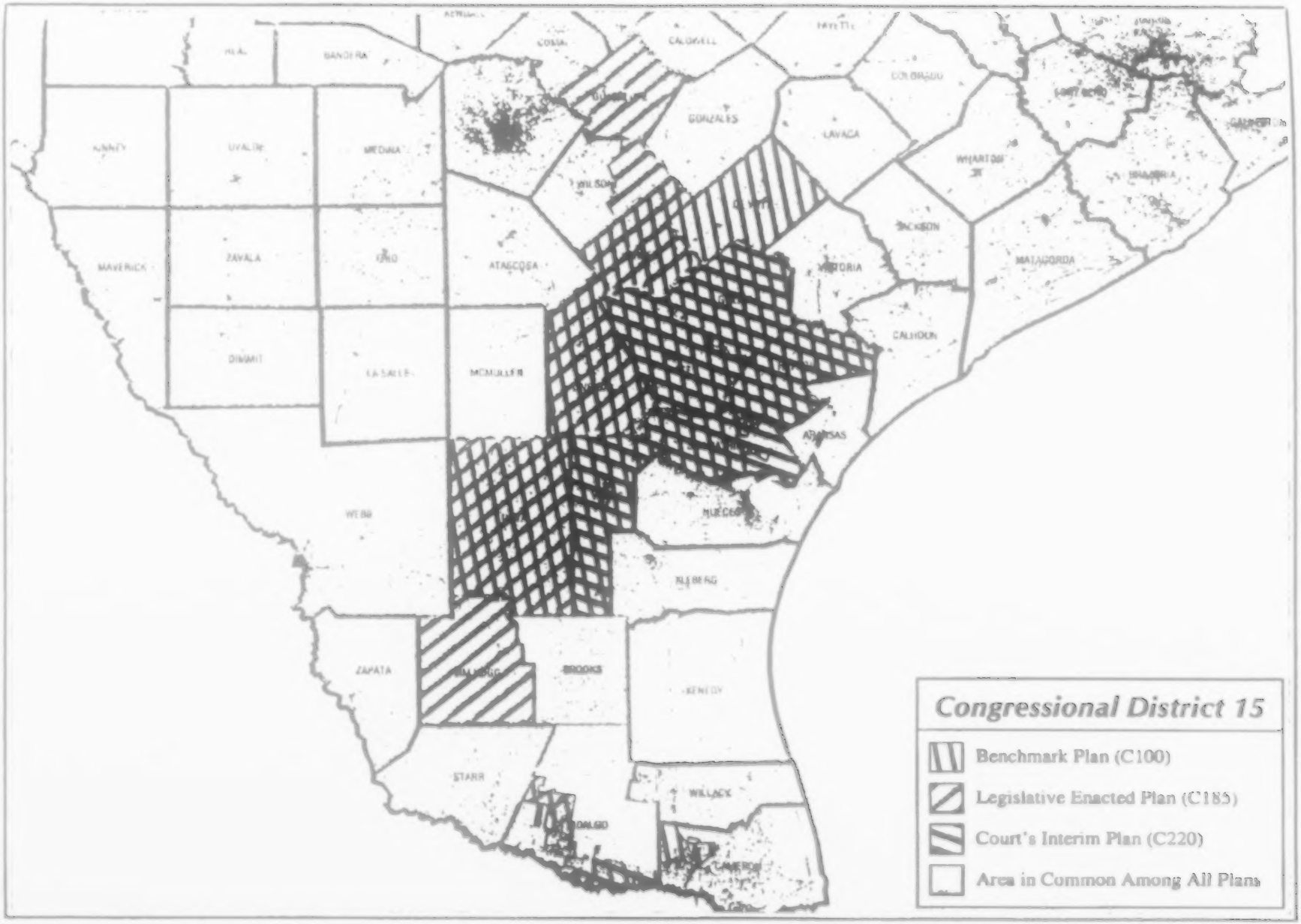
WILLIAMSON
TRAVIS
BLANCO
HAYS
BASTROP
CALDWELL
EL PASO
HUDSPETH
KENDALL
BANDERA
COMAL
GUADALUPE
BEXAR
WILSON
ATASCOSA
MEDINA
MONTAGUE
COOKE
GRAYSON
FANNIN
WISE
DENTON
COLLIN
HUNT
ROCKWALL
PARKER
DALLAS
KAUFMAN
TARRANT
JOHNSON
ELLIS
MONTGOMERY
LIBERTY
WALLER
HARRIS
CHAMBERS
FORT BEND
BRAZORIA
GALVESTON
JIM HOGG
BROOKS
KENEDY
STARR
WILLACY
HIDALGO
CAMERON

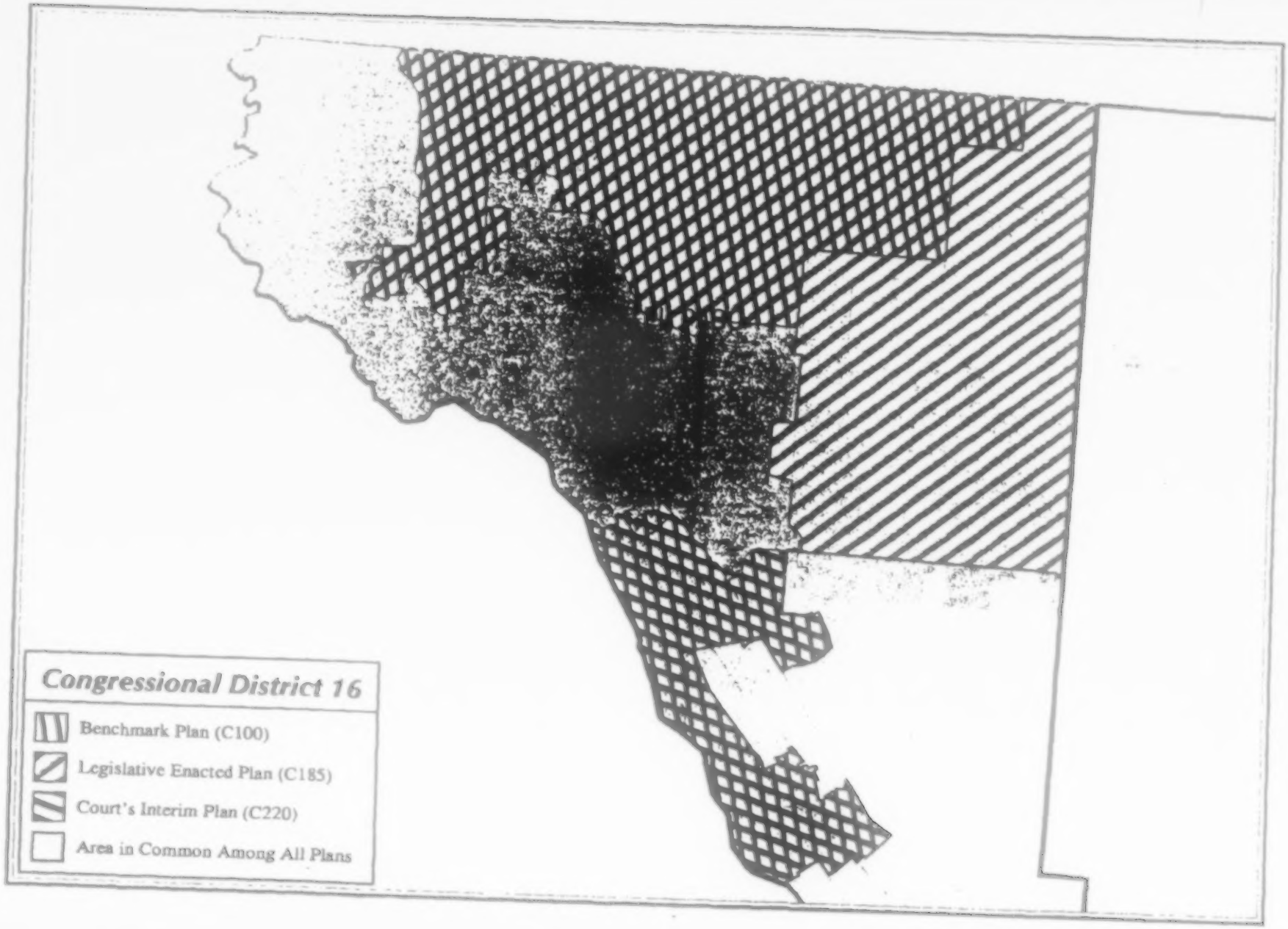

U.S. Congressional Districts
Court-Ordered Interim Congressional Plan
PLANC220
BURNET
WILLIAMSON
BLANCO
TRAVIS
LEE
HAYS
BASTROP
CALDWELL
EL PASO
HUDSPETH
KENDALL
BANDERA
COMAL
GUADALUPE
MEDINA
BEXAR
WILSON
ATASCOSA
GRAYSON
FANNIN
WISE
DENTON
COLLIN
HUNT
ROCKWALL
PARKER
TARRANT
DALLAS
KAUFMAN
JOHNSON
ELLIS
MONTGOMERY
LIBERTY
WALLER
HARRIS
CHAMBERS
FORT BEND
BRAZORIA
GALVESTON
JIM HOGG
BROOKS
KENEDY
STARR
WILLACY
HIDALGO
CAMERON
COUNTIES
PLANC220


U.S. Congressional Districts
112th Congress (2011-2012)
PLANC100
COUNTIES
PLANC100
BURNET
WILLIAMSON
BLANCO
TRAVIS
LEE
HAYS
BASTROP
CALDWELL
EL PASO
HUDSPETH
KENDALL
BANDERA
COMAL
GUADALUPE
MEDINA
BEXAR
WILSON
ATASCOSA
WISE
DENTON
COLLIN
HUNT
TARRANT
ROCKWALL
PARKER
DALLAS
KAUFMAN
HOOD
JOHNSON
ELLIS
MONTGOMERY
LIBERTY
HARRIS
WALLER
FORT BEND
CHAMBERS
BRAZORIA
GALVESTON
JIM HOGG
BROOKS
KENNEDY
STARR
WILLACY
HIDALGO
CAMERON

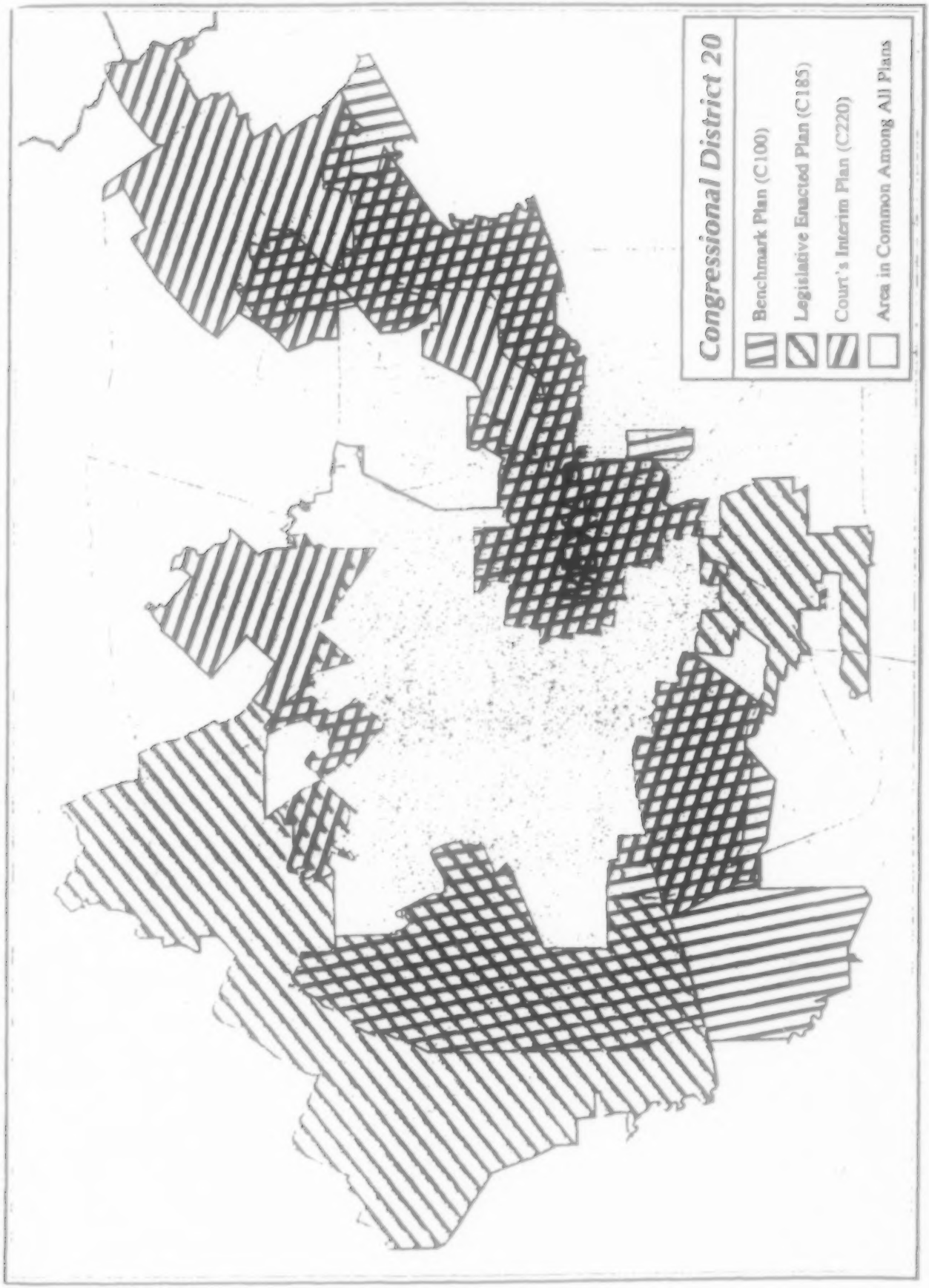

SAS
BELL
ROBERTSON
MADISON
TR
JRNET
WILLIAMSON
BRAZOS
WALKER
GRIMES
SAN
LEE
WASHINGTON
MONTGOMERY
HAYS
CALDWELL
HARRIS
FAYETTE
COLORADO
FORT BEND
LAVACA
WHARTON
Congressional District 10
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans

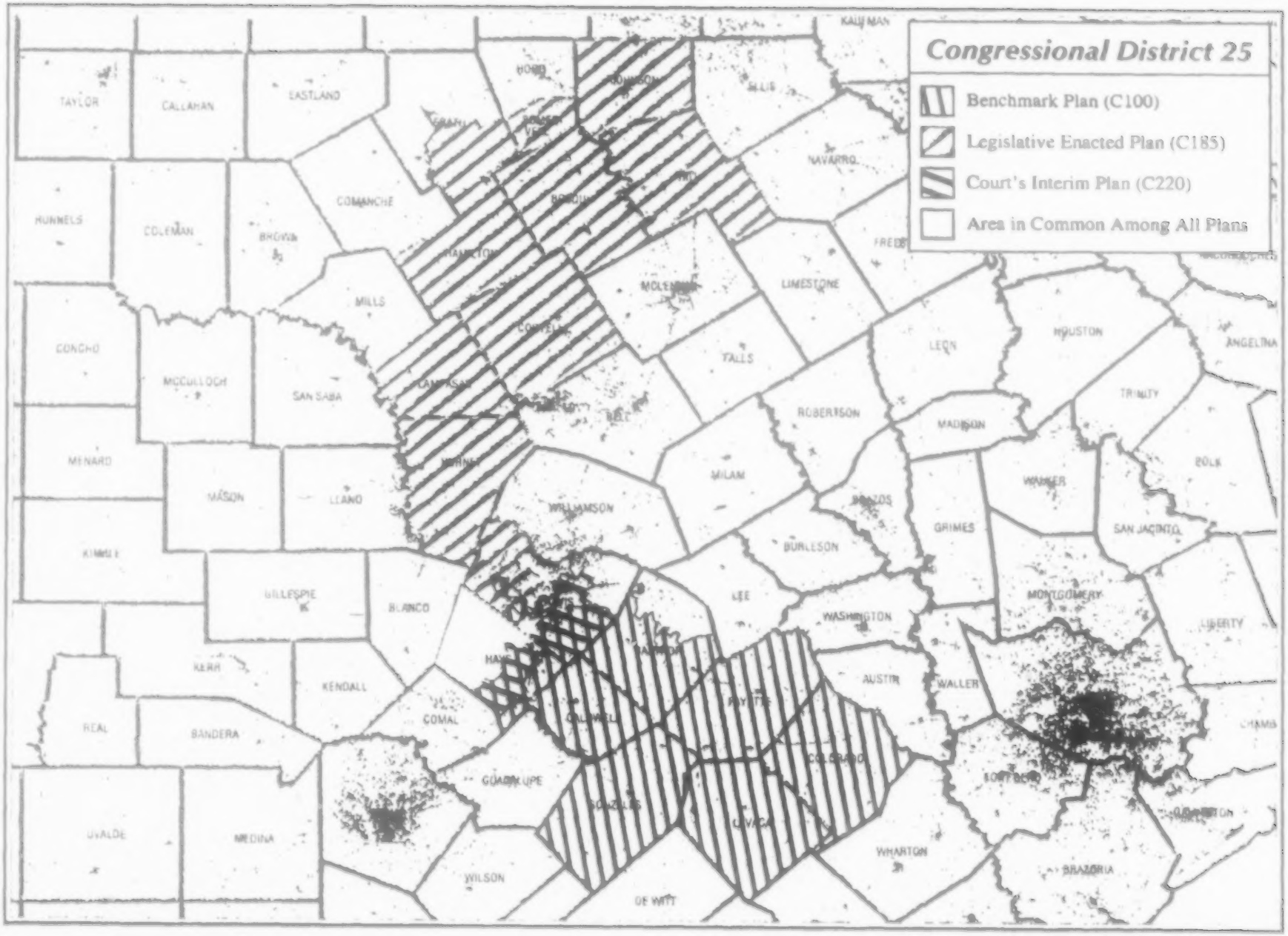
MJA 4


Congressional District 15
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans
BANDERA
COMAL
CALDWELL
FAYETTE
COLORADO
GONZALES
LAVACA
WHARTON
BRAZORIA
KINNEY
UVALDE
MEDINA
WILSON
JACKSON
MATAGORDA
MAVERICK
ZAVALA
FRIO
ATASCOSA
VICTORIA
CALHOUN
DIMMIT
LA SALLE
MCMULLEN
ARANSAS
WEBB
NUECES
KLEBERG
ZAPATA
BROOKS
KENEDY
STARR
WILLACK
CAMERON

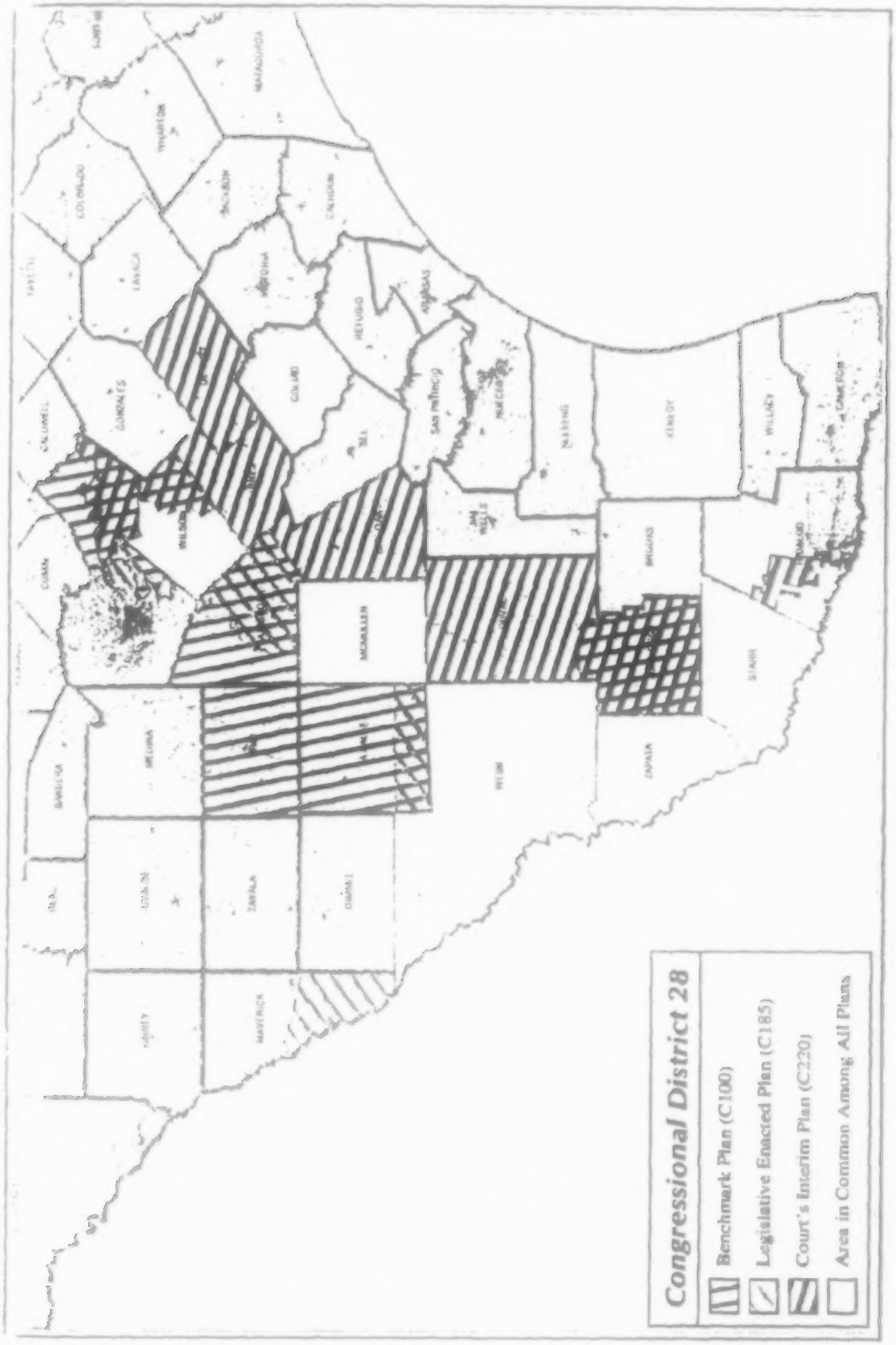

Congressional District 16
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans

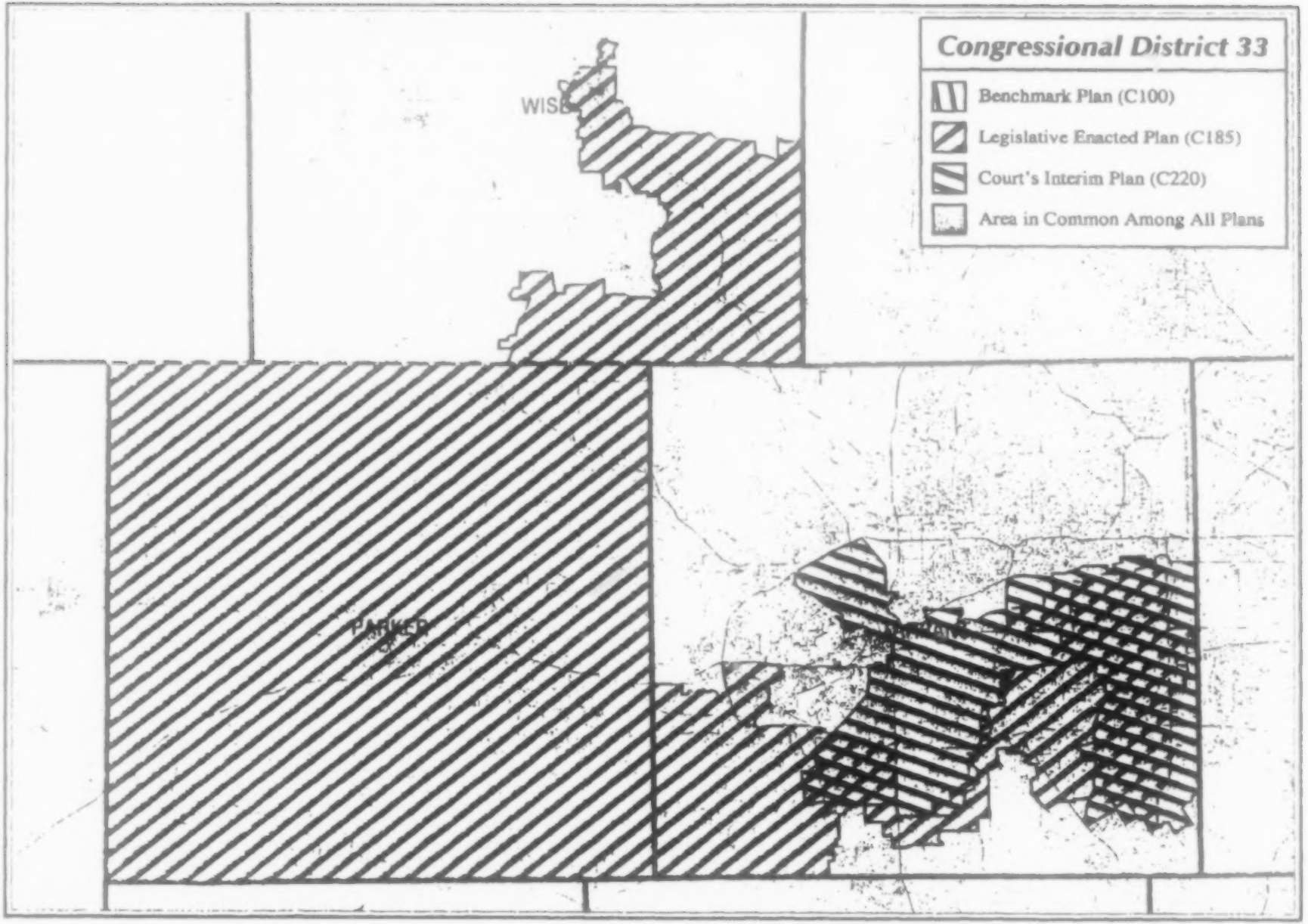
MJA 6

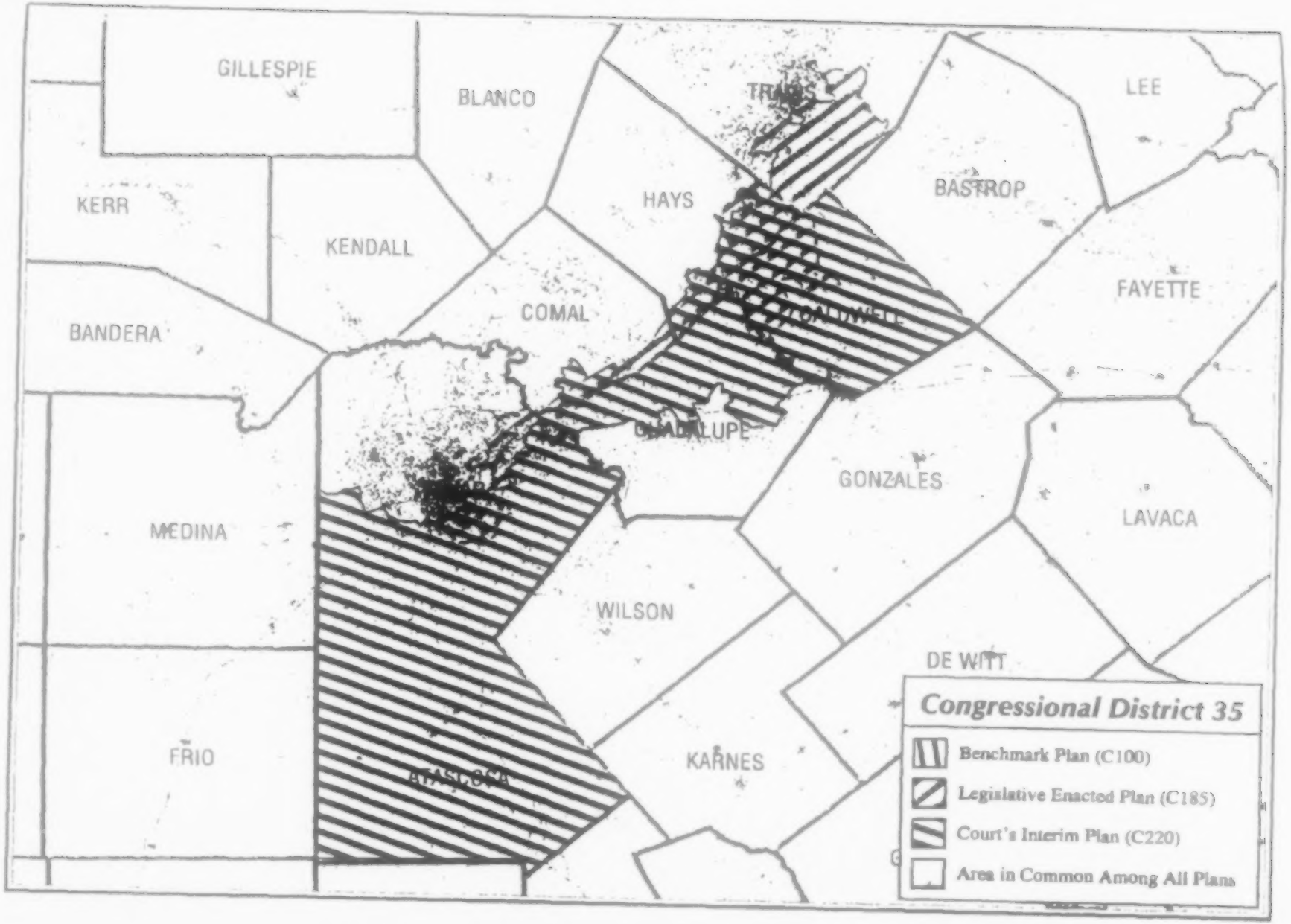

Congressional District 20
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans


Congressional District 25
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans
TAYLOR
CALLAHAN
EASTLAND
COMANCHE
HUNNELS
COLEMAN
BROWN
MILLS
CONCHO
MCCULLOCH
SAN SABA
MENARD
MASON
LLANO
KIMBLE
GILLESPIE
BLANCO
KERR
KENDALL
REAL
BANDERA
COMAL
GUADALUPE
UVALDE
MEDINA
WILSON
DE WITT
LIMESTONE
FALLS
ROBERTSON
MILAM
WILLIAMSON
BURLESON
LEE
WASHINGTON
AUSTIN
WALLER
GRIMES
MADISON
LEON
HOUSTON
TRINITY
POLK
SAN JACINTO
MONTGOMERY
LIBERTY
WHARTON
BRAZORIA
NAVARRO
ANGELINA

MUA 8


Congressional District 28
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans


Congressional District 33
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans
WISE
PARKER

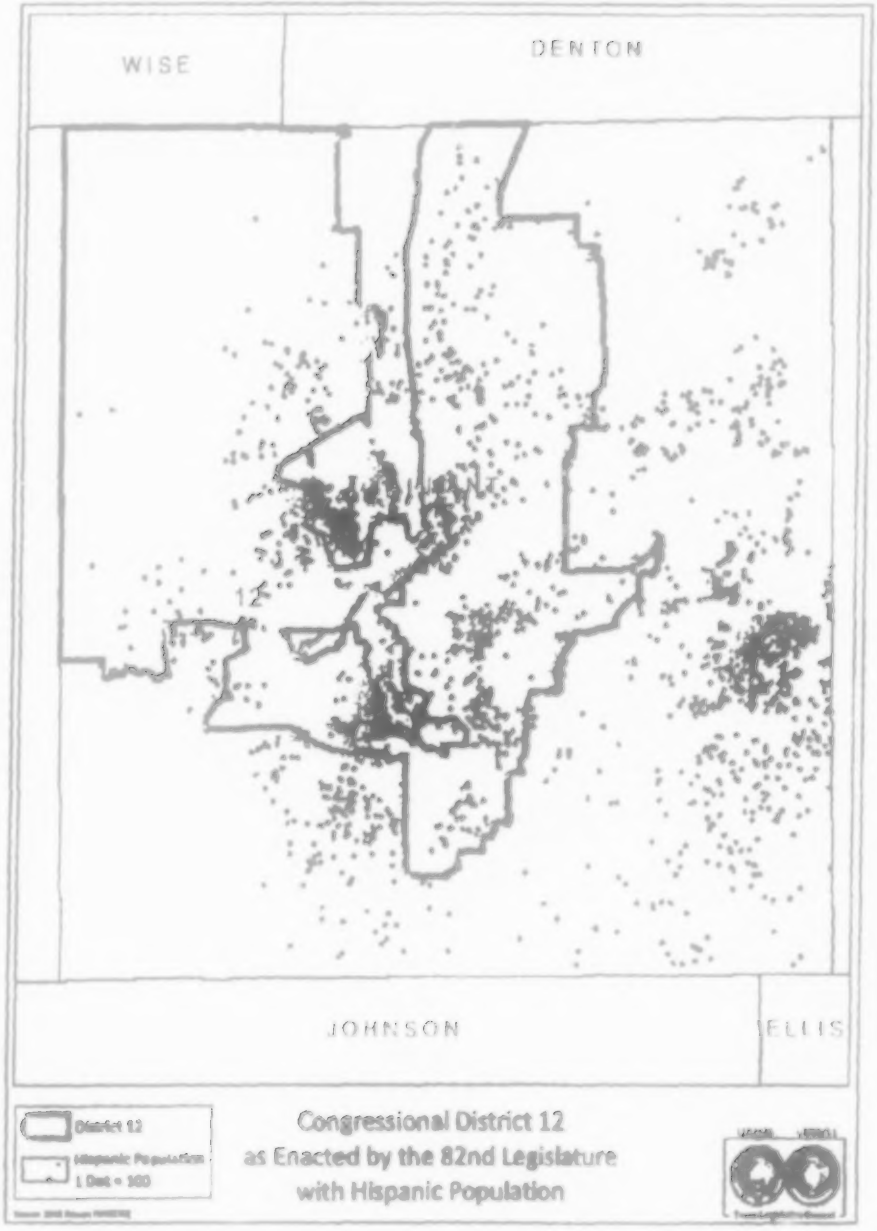

GILLESPIE
BLANCO
TRAVIS
LEE
KERR
HAYS
BASTROP
KENDALL
FAYETTE
COMAL
BANDERA
GUADALUPE
GONZALES
LAVACA
MEDINA
WILSON
DE WITT
FRIO
KARNES
Congressional District 35
Benchmark Plan (C100)
Legislative Enacted Plan (C185)
Court's Interim Plan (C220)
Area in Common Among All Plans

MAP 11

Figure 11: Congressional District 12 in Tarrant County

Part A: Who Is Being Avoided?

Part B: Latinos Are Being Avoided



Part C: Fort Worth Latinos Are Being Diluted in a Sea of Denton County Anglos

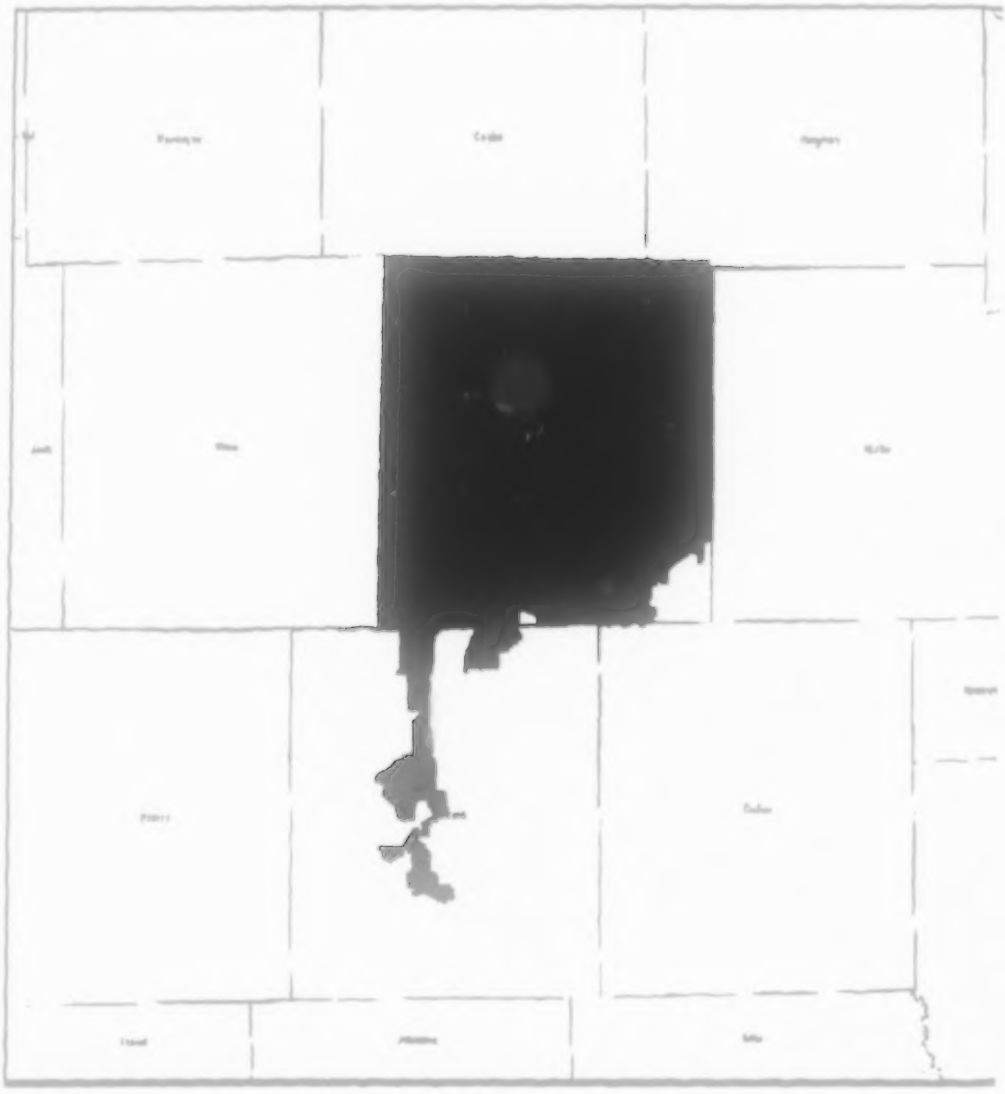
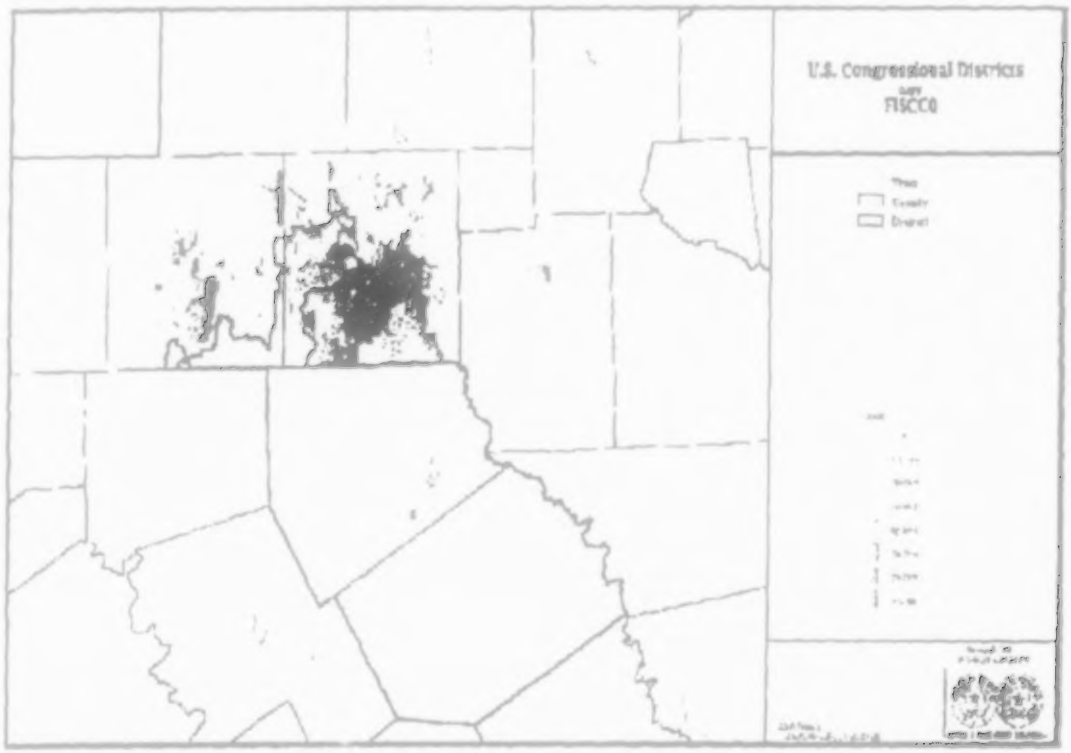


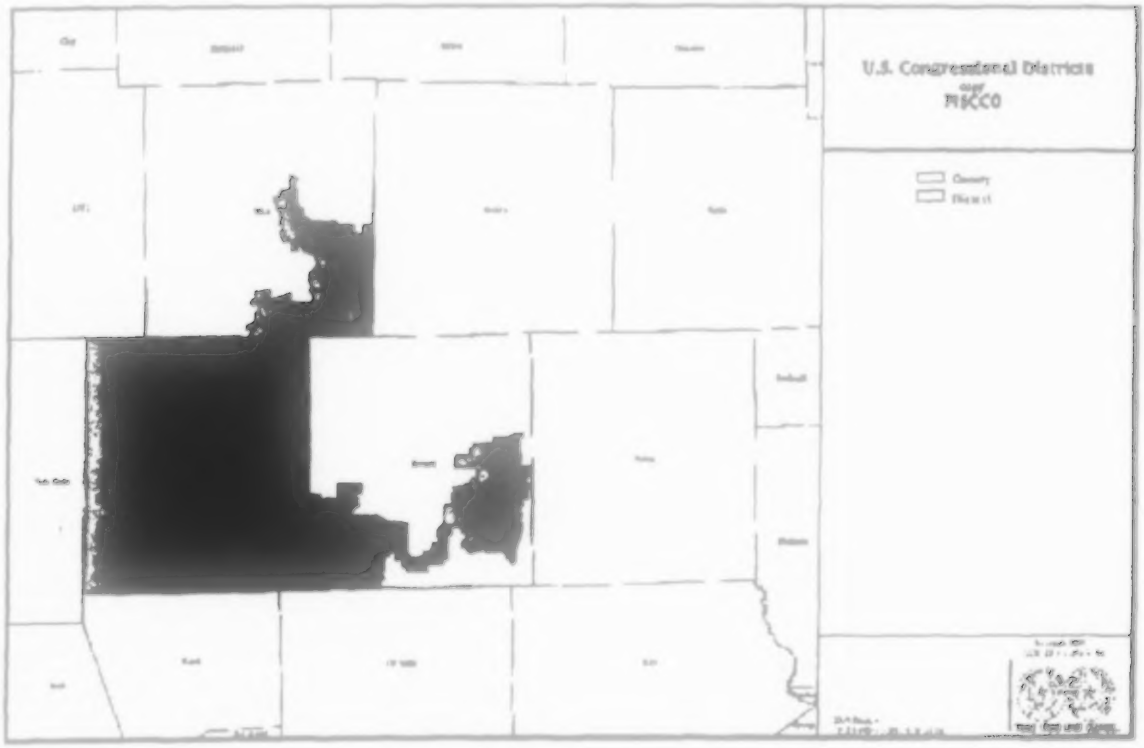
Figure 12: Congressional Districts 6 and 33:
Two Other Suburban Incisions into the Metroplex

Part A: CD 6

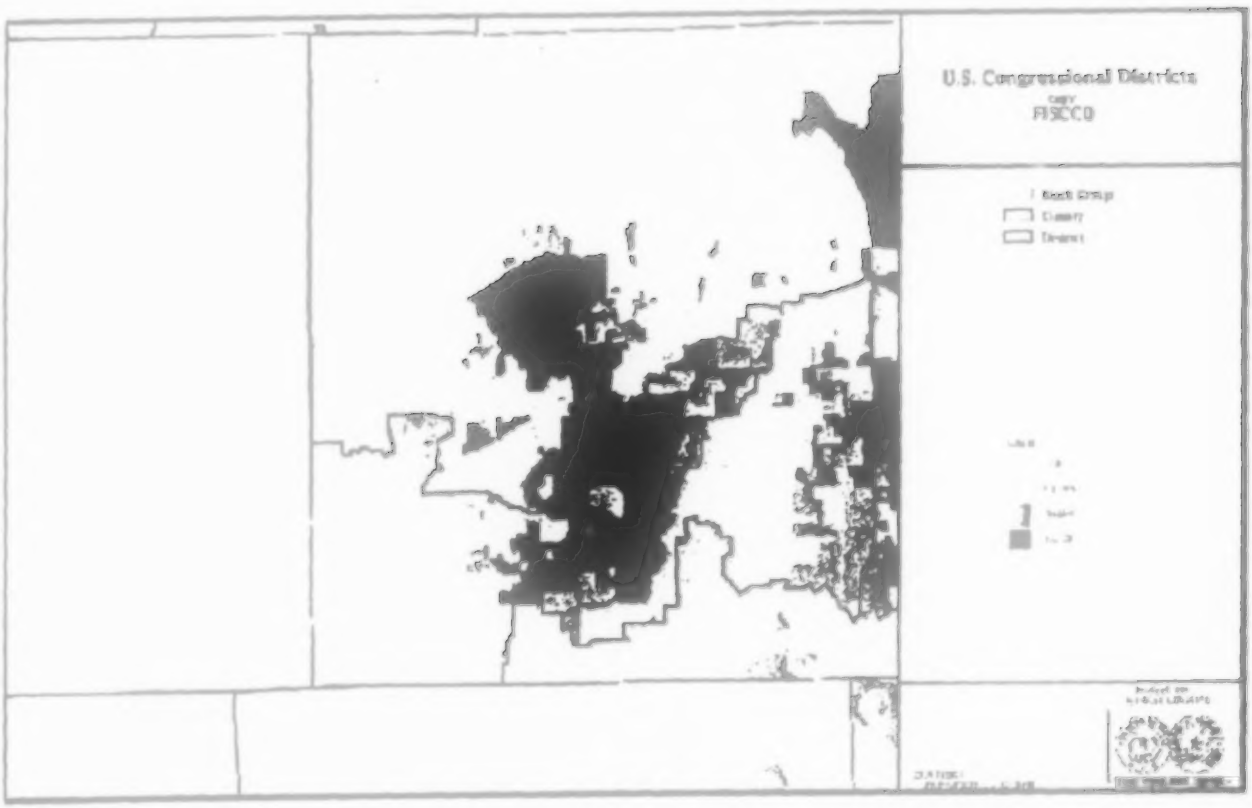
Part B: CD 6: Black + Latino Concentrations



Part C: CD 33: Basic Outline



Part D: CD 33: Black + Latino Concentrations



C191: Changes made to C100 CD 23 in C185 CD23

Map layers

PLANC191

County

PLANC191 selection

OUT (Moved Out of C100 CD23)

IN (Moved Into C100 CD23)

NO Change

Population and Voter Data

CONGRESSIONAL DISTRICTS - PLANC220

District	Deviation		Population Total	%A	%B	%H	%BH	%O	General Election	Turnout	Total Voter Registration Total	SSVR	TO/VR	Non-Suspense Voter Registration Total	SSVR	TO/VR
1	258	Total:	698,746	64.3	18.6	13.5	33.7	1.9	2010	164,457	404,714	4.41%	40.64%	351,521	4.37%	46.78%
	0.04%	VAP:	523,261	68.2	17.8	12.3	29.9	1.9	2008	259,804	424,601	4.21%	61.19%	362,569	4.18%	71.66%
2	-122	Total:	698,366	51.0	14.8	27.3	41.4	7.6	2010	169,272	369,612	12.63%	45.8%	323,953	12.55%	52.25%
	-0.02%	VAP:	506,800	55.1	13.5	24.1	37.2	7.6	2008	242,259	371,724	11.66%	65.17%	325,666	12.38%	74.39%
3	-50	Total:	698,438	62.2	9.4	14.5	23.6	14.2	2010	140,822	381,381	5.88%	36.92%	331,196	5.67%	42.52%
	-0.01%	VAP:	499,366	65.1	8.7	12.8	21.3	13.6	2008	267,508	381,233	5.93%	70.17%	329,210	5.77%	81.26%
4	453	Total:	698,941	73.8	11.5	12.2	23.5	2.7	2010	162,672	413,981	3.79%	39.29%	360,537	3.71%	45.12%
	0.06%	VAP:	522,031	77.1	10.7	9.8	20.3	2.6	2008	260,969	425,891	3.55%	61.28%	368,325	3.53%	70.85%
5	-30	Total:	698,458	58.3	14.4	24.5	38.5	3.2	2010	137,665	361,909	8.03%	38.04%	313,685	7.95%	43.89%
	0.00%	VAP:	513,950	63.3	13.5	20.4	33.6	3.2	2008	226,962	374,662	7.83%	60.58%	323,994	7.77%	70.05%
6	-270	Total:	698,218	38.9	14.3	44.0	57.7	3.4	2010	116,713	330,824	20.37%	35.28%	290,109	20.95%	40.23%
	-0.04%	VAP:	486,757	44.1	13.7	39.1	52.4	3.5	2008	206,452	342,111	20.37%	60.35%	298,630	20.47%	69.13%
7	99	Total:	698,587	52.1	11.6	25.7	36.7	11.2	2010	183,815	382,973	10.91%	48.0%	329,256	10.64%	55.83%
	0.01%	VAP:	530,427	55.8	10.6	22.9	33.1	11.2	2008	261,524	386,695	10.0%	67.63%	334,987	10.53%	78.07%
8	-208	Total:	698,280	69.4	8.9	19.0	27.6	3.0	2010	173,221	380,345	6.75%	45.54%	329,827	6.65%	52.52%
	-0.03%	VAP:	520,167	72.5	8.8	16.1	24.7	2.8	2008	238,208	379,536	6.56%	62.76%	331,865	6.55%	71.78%
9	131	Total:	698,619	10.3	37.4	41.5	77.7	12.0	2010	103,109	294,119	15.49%	35.06%	245,248	15.96%	42.04%
	0.02%	VAP:	499,679	12.5	37.0	38.0	74.1	13.5	2008	170,968	302,707	14.49%	56.48%	259,131	15.73%	65.98%
10	-104	Total:	698,384	60.8	10.4	21.5	31.3	7.9	2010	173,349	414,586	10.28%	41.81%	349,472	10.04%	49.6%
	-0.01%	VAP:	511,250	64.4	9.7	18.6	28.0	7.6	2008	273,758	413,420	10.32%	66.22%	358,178	10.16%	76.43%
11	-73	Total:	698,415	60.8	4.3	33.4	37.3	1.9	2010	151,973	392,656	19.88%	38.7%	340,349	19.68%	44.65%
	-0.01%	VAP:	521,941	65.5	3.9	28.9	32.6	1.9	2008	240,827	406,784	19.69%	59.2%	354,181	19.5%	68.0%
12	135	Total:	698,623	67.4	8.3	20.1	28.0	4.7	2010	152,711	388,551	8.74%	39.3%	330,866	8.54%	46.15%
	0.02%	VAP:	520,787	71.6	7.3	16.7	23.8	4.6	2008	258,574	393,035	8.59%	65.79%	338,961	8.49%	76.28%
13	78	Total:	698,566	67.0	6.1	24.1	29.8	3.2	2010	146,911	401,505	11.73%	36.59%	342,202	11.4%	42.93%
	0.01%	VAP:	518,960	71.4	5.6	20.1	25.5	3.1	2008	247,576	418,340	11.48%	59.18%	357,319	11.03%	69.29%
14	-105	Total:	698,383	53.7	20.8	22.2	42.5	3.8	2010	164,593	413,320	11.52%	39.82%	351,414	11.48%	46.84%
	-0.02%	VAP:	523,211	57.3	19.8	19.3	38.9	3.8	2008	245,834	430,163	11.24%	57.15%	366,624	11.24%	67.05%
15	-57	Total:	698,431	13.6	1.4	84.2	85.2	1.2	2010	84,816	313,525	72.43%	27.05%	273,371	73.45%	31.03%
	-0.01%	VAP:	471,368	16.7	1.5	80.8	82.0	1.3	2008	147,801	327,447	72.23%	45.14%	283,101	73.09%	52.21%
16	2	Total:	698,490	12.6	3.3	83.2	85.7	1.7	2010	77,478	337,013	69.73%	22.99%	317,225	70.2%	24.42%
	0.00%	VAP:	491,569	14.7	3.1	80.9	83.5	1.8	2008	164,245	345,721	70.21%	47.51%	304,890	71.49%	53.87%
17	-130	Total:	698,358	64.2	11.4	21.5	32.5	3.3	2010	155,087	370,571	9.94%	41.85%	313,913	9.75%	49.4%
	-0.02%	VAP:	529,634	68.3	10.3	18.1	28.2	3.5	2008	232,237	386,279	9.81%	60.12%	326,255	9.59%	71.18%
18	-130	Total:	698,358	16.0	38.0	42.9	79.9	4.1	2010	121,326	338,673	17.66%	35.82%	287,613	17.99%	42.18%
	-0.02%	VAP:	508,180	19.5	38.3	38.4	76.0	4.5	2008	191,039	344,877	16.75%	55.39%	296,481	17.98%	64.44%
19	-322	Total:	698,166	57.2	6.9	34.1	40.5	2.4	2010	138,665	384,663	23.32%	36.05%	330,290	23.08%	41.98%
	-0.05%	VAP:	522,173	61.9	6.3	29.7	35.6	2.5	2008	238,862	408,413	23.19%	58.49%	343,136	22.72%	69.61%
20	210	Total:	698,704	23.4	7.8	66.7	73.4	3.1	2010	106,606	354,286	52.57%	30.09%	288,203	53.39%	36.99%
	0.03%	VAP:	519,609	27.3	7.2	62.8	69.4	3.3	2008	193,679	376,292	53.17%	51.47%	308,476	54.08%	62.79%
21	38	Total:	698,526	68.4	3.3	24.2	27.1	4.5	2010	225,086	464,685	13.82%	48.44%	403,745	13.41%	55.75%
	0.01%	VAP:	532,254	71.6	3.0	21.4	24.1	4.2	2008	320,705	459,652	13.71%	69.77%	403,059	13.39%	79.57%
22	-233	Total:	698,255	44.4	15.9	22.9	38.2	17.5	2010	168,112	370,416	13.58%	45.38%	324,179	13.48%	51.86%

Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and th

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	-0.03%	VAP:	494,485	47.3	15.0	20.7	35.4	17.3	2008	241,859	359,164	13.66%	67.34%	323,206	13.62%	74.83%
23	-261	Total:	698,227	26.5	5.2	66.4	70.8	2.7	2010	121,994	372,386	52.23%	32.76%	326,030	53.09%	37.42%
	-0.04%	VAP:	493,298	30.1	4.9	62.6	67.0	2.9	2008	204,060	374,787	52.21%	54.45%	324,339	52.98%	62.92%
24	200	Total:	698,688	56.6	9.7	21.9	31.2	12.2	2010	147,566	383,884	8.61%	38.44%	315,566	8.24%	46.76%
	0.03%	VAP:	522,909	60.4	9.0	19.0	27.8	11.9	2008	265,517	401,060	8.68%	66.2%	335,301	8.42%	79.19%
25	-341	Total:	698,147	46.3	9.3	39.8	48.3	5.4	2010	154,443	403,105	18.4%	38.31%	321,441	18.41%	48.05%
	-0.05%	VAP:	536,212	51.4	8.7	34.6	42.8	5.8	2008	258,949	409,298	18.76%	63.27%	345,931	18.62%	74.86%
26	29	Total:	698,517	68.0	8.0	17.3	25.0	7.1	2010	138,312	381,848	7.5%	36.22%	320,408	7.34%	43.17%
	0.00%	VAP:	496,192	71.0	7.4	15.0	22.2	6.8	2008	255,531	378,682	7.49%	67.48%	327,232	7.49%	78.09%
27	-130	Total:	698,358	16.3	2.2	80.6	82.4	1.3	2010	90,513	335,059	67.76%	27.01%	290,539	68.92%	31.15%
	-0.02%	VAP:	486,094	19.6	2.2	77.2	79.0	1.4	2008	159,912	342,888	68.23%	46.64%	304,417	69.27%	52.53%
28	57	Total:	698,545	14.7	1.3	83.4	84.4	0.9	2010	89,372	314,024	70.85%	28.46%	278,617	71.11%	32.08%
	0.01%	VAP:	468,400	17.6	1.4	80.2	81.4	1.0	2008	146,547	312,242	71.54%	46.93%	280,299	72.04%	52.28%
29	-35	Total:	698,453	12.4	11.1	75.7	86.0	1.7	2010	70,274	245,150	50.76%	28.67%	214,239	52.06%	32.8%
	-0.01%	VAP:	470,594	15.5	11.2	72.0	82.6	1.9	2008	112,560	252,013	48.64%	44.66%	218,544	52.19%	51.5%
30	218	Total:	698,706	16.9	42.8	39.2	81.2	1.9	2010	115,254	340,693	13.39%	33.83%	289,312	13.91%	39.84%
	0.03%	VAP:	502,413	21.3	42.8	34.2	76.5	2.2	2008	209,230	358,356	13.29%	58.39%	305,540	13.5%	68.48%
31	-50	Total:	698,438	58.5	15.7	22.2	36.8	4.7	2010	136,154	370,215	11.44%	36.78%	301,776	11.05%	45.12%
	-0.01%	VAP:	503,220	63.0	14.0	19.1	32.4	4.6	2008	227,156	375,776	11.63%	60.45%	315,647	11.36%	71.97%
32	239	Total:	698,727	51.6	13.4	26.9	39.8	8.5	2010	160,258	378,857	8.65%	42.3%	325,077	8.56%	49.3%
	0.03%	VAP:	520,099	56.3	12.3	23.0	35.0	8.7	2008	266,205	398,906	8.6%	66.73%	342,245	8.48%	77.78%
33	429	Total:	698,917	27.6	27.2	39.6	66.0	6.4	2010	101,821	311,793	16.98%	32.66%	253,567	17.34%	40.16%
	0.06%	VAP:	486,729	32.6	26.3	34.9	60.7	6.7	2008	200,280	329,671	16.8%	60.75%	276,320	17.04%	72.48%
34	33	Total:	698,521	54.7	8.9	33.2	41.4	3.8	2010	173,461	402,410	20.01%	43.11%	350,211	19.55%	49.53%
	0.00%	VAP:	511,992	59.4	8.0	29.1	36.8	3.7	2008	246,383	400,128	19.86%	61.58%	352,912	19.48%	69.81%
35	51	Total:	698,539	29.7	9.7	59.6	68.3	2.0	2010	108,494	358,194	44.24%	30.29%	299,401	45.12%	36.24%
	0.01%	VAP:	496,906	33.7	9.3	55.5	64.2	2.1	2008	187,187	366,031	44.67%	51.14%	308,259	45.27%	60.72%
36	-22	Total:	698,466	62.2	10.4	23.4	33.5	4.4	2010	161,189	400,830	10.32%	40.21%	350,164	10.23%	46.03%
	0.00%	VAP:	516,820	65.8	9.9	20.2	29.9	4.4	2008	237,191	415,156	9.64%	57.13%	359,526	9.93%	65.97%

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Plan Overlap Analysis

CONGRESSIONAL DISTRICTS
PLANC220 Compared with PLANC185
2010 General Election

PLANC220	PLANC185		Total Population: Total	%A	%B	%H	%Bkl	%O	Total Voter Registration: Total	SSVR-T	Turnout: Total	TO/VR
1			698,746	64.3	18.6	15.5	33.7	1.9	404,714	4.4 %	164,457	40.6 %
	1	97.2 %	678,978	63.8	18.9	15.7	34.3	1.9	391,463	4.5 %	159,300	40.7 %
	4	2.2 %	15,675	83.8	8.7	5.6	14.3	2.0	10,500	2.1 %	3,826	36.4 %
	5	0.6 %	4,093	81.9	7.7	9.5	17.0	1.1	2,742	2.8 %	1,331	48.5 %
2			698,366	51.0	14.8	27.3	41.6	7.6	369,612	12.6 %	169,272	45.8 %
	2	73.0 %	509,993	53.2	15.2	24.3	38.8	8.0	279,464	12.0 %	129,615	46.4 %
	7	11.7 %	81,954	40.8	9.6	41.7	50.5	8.7	38,340	16.3 %	17,794	46.4 %
	8	3.1 %	21,759	53.0	13.5	25.9	38.9	8.1	10,181	13.3 %	4,438	43.6 %
	10	2.1 %	14,940	59.9	9.7	21.7	30.9	9.1	8,963	9.6 %	4,624	51.6 %
	18	0.4 %	2,749	18.3	34.2	33.5	67.1	14.6	1,269	19.6 %	428	33.7 %
	29	1.0 %	6,872	17.3	34.7	45.7	79.4	3.3	2,281	21.1 %	731	32.0 %
	36	8.6 %	60,099	48.1	17.1	32.9	49.4	2.6	29,114	14.0 %	11,642	40.0 %
3			698,438	62.2	9.4	14.5	23.6	14.2	381,381	5.9 %	140,822	36.9 %
	3	97.8 %	683,387	62.1	9.4	14.5	23.5	14.4	373,225	5.9 %	137,681	36.9 %
	4	1.2 %	8,301	78.6	3.6	17.6	21.1	2.3	4,664	3.3 %	1,909	40.9 %
	32	1.0 %	6,750	63.7	14.9	14.4	29.0	7.3	3,492	9.3 %	1,312	37.6 %
4			698,941	73.8	11.5	12.2	23.5	2.7	413,981	3.8 %	162,672	39.3 %
	1	1.4 %	9,722	80.8	11.2	6.4	17.6	1.9	6,657	2.1 %	2,510	37.7 %
	3	2.1 %	14,641	79.4	3.9	14.2	17.8	2.8	8,412	5.7 %	3,292	39.1 %
	4	96.5 %	674,512	73.6	11.7	12.3	23.7	2.7	398,875	3.8 %	156,858	39.3 %
	32	0.0 %	66	86.4	0.0	9.1	9.1	4.5	37	2.7 %	12	32.4 %
5			698,458	58.3	14.4	24.5	38.5	3.2	361,909	8.0 %	137,665	38.0 %
	1	1.4 %	9,788	90.5	1.4	6.9	8.2	1.3	6,534	2.2 %	3,375	51.7 %
	5	94.0 %	656,894	58.4	14.5	24.4	38.5	3.1	339,648	7.9 %	128,447	37.8 %
	30	0.9 %	6,026	27.4	11.9	59.7	70.8	1.8	1,735	31.4 %	503	29.0 %
	32	3.7 %	25,750	51.5	18.4	24.5	42.2	6.3	13,992	10.3 %	5,340	38.2 %
6			698,218	38.9	14.3	44.0	57.7	3.4	330,824	20.4 %	116,713	35.3 %
	6	78.2 %	546,209	41.7	11.6	43.8	54.8	3.5	253,390	20.3 %	86,806	34.3 %
	26	0.7 %	4,573	55.3	4.7	33.7	38.2	6.5	2,743	10.0 %	1,115	40.6 %
	30	18.5 %	129,010	21.8	26.9	49.7	75.9	2.3	62,819	23.6 %	23,658	37.7 %
	33	2.6 %	18,426	71.4	10.8	12.1	22.5	6.1	11,872	6.8 %	5,134	43.2 %
7			698,587	52.1	11.6	25.7	36.7	11.2	382,973	10.9 %	183,815	48.0 %
	2	0.0 %	3	100.0	0.0	0.0	0.0	0.0	2	0.0 %	0	0.0 %
	7	83.5 %	583,622	52.0	12.0	25.2	36.5	11.4	317,414	10.9 %	153,774	48.4 %
	9	1.8 %	12,659	9.6	12.3	76.1	87.2	3.2	2,351	21.7 %	511	21.7 %
	10	2.4 %	16,612	33.4	17.4	42.7	59.2	7.3	7,068	22.3 %	2,495	35.3 %
	18	12.3 %	85,691	82.6	7.8	18.4	25.9	11.5	56,138	9.2 %	27,035	48.2 %
8			698,280	69.4	8.9	19.0	27.6	3.0	380,345	6.7 %	173,221	45.5 %
	8	92.7 %	647,371	69.3	8.8	19.2	27.7	3.0	351,906	6.9 %	160,412	45.6 %
	10	3.0 %	21,117	72.5	7.2	17.2	24.1	3.4	10,987	6.2 %	5,193	47.3 %
	17	4.3 %	29,792	70.2	13.6	15.3	28.6	1.2	17,452	3.9 %	7,616	43.6 %
9			698,619	10.3	37.4	41.5	77.7	12.0	294,119	15.5 %	103,109	35.1 %
	7	0.0 %	40	30.0	27.5	35.0	62.5	7.5	13	7.7 %	0	0.0 %
	9	80.9 %	564,926	10.1	37.5	48.4	78.6	13.3	237,993	14.9 %	83,831	34.9 %
	18	19.1 %	133,653	11.2	37.2	46.1	82.2	6.6	56,113	18.2 %	20,078	35.8 %
10			698,384	60.8	10.4	21.5	31.3	7.9	414,586	10.3 %	173,349	41.8 %
	8	1.6 %	11,349	61.4	6.8	24.3	30.8	7.9	5,621	11.8 %	2,725	48.5 %
	10	43.3 %	302,606	61.1	11.7	21.3	32.4	6.4	186,057	9.0 %	83,434	44.8 %
	17	26.2 %	183,062	52.5	13.7	25.3	38.2	9.3	102,945	13.1 %	38,084	37.0 %
	25	2.9 %	20,099	81.8	2.2	9.4	11.5	6.7	15,420	4.6 %	8,044	52.2 %
	31	25.9 %	180,808	66.2	5.9	19.3	24.7	9.2	104,347	10.5 %	41,003	39.3 %
	35	0.1 %	460	29.6	28.2	49.6	67.8	2.6	196	24.0 %	59	30.1 %
11			698,415	60.8	4.3	33.4	37.3	1.9	392,656	19.9 %	151,973	38.7 %
	11	96.7 %	675,175	60.1	4.4	34.1	38.0	1.9	378,822	20.4 %	146,121	38.6 %
	19	0.8 %	5,706	85.4	2.3	11.5	13.4	1.2	3,835	6.3 %	1,665	43.4 %
	23	2.5 %	17,534	81.5	1.8	14.7	16.5	2.0	9,999	4.7 %	4,187	41.9 %
12			698,623	67.4	8.3	20.1	28.0	4.7	388,551	8.7 %	152,711	39.3 %
	6	5.0 %	34,794	70.4	11.2	15.5	26.3	3.3	18,572	8.3 %	7,309	39.4 %
	12	45.0 %	314,647	64.5	7.1	23.5	30.2	5.3	163,269	10.7 %	60,727	37.2 %
	25	1.0 %	7,075	79.5	5.2	12.6	17.6	2.8	3,805	7.6 %	1,586	41.7 %
	26	5.4 %	37,409	41.8	7.3	45.6	52.3	5.9	15,868	22.3 %	5,079	32.0 %
	33	43.6 %	304,898	72.9	9.4	14.0	23.1	4.1	187,037	6.0 %	78,010	41.7 %
13			698,566	67.0	6.1	24.1	29.8	3.2	401,505	11.7 %	146,911	36.6 %
	13	98.6 %	689,092	66.9	6.2	24.1	29.9	3.2	396,008	11.8 %	144,932	36.6 %
	33	1.4 %	9,474	71.6	1.7	25.2	26.7	1.7	5,497	9.9 %	1,979	36.0 %
14			698,383	53.7	20.8	22.2	42.5	3.8	413,320	11.5 %	164,593	39.8 %
	14	97.2 %	678,929	53.6	21.3	21.7	42.5	3.9	403,469	11.2 %	161,300	40.0 %
	22	2.8 %	19,454	54.4	3.3	40.4	43.4	2.2	9,851	26.3 %	3,293	33.4 %
15			698,431	13.6	1.4	84.2	85.2	1.2	313,523	72.4 %	84,816	27.1 %
	15	62.3 %	435,249	7.2	0.9	91.0	91.5	1.3	172,604	80.2 %	42,228	24.5 %
	27	7.4 %	51,762	49.6	3.0	45.7	48.2	2.2	34,158	36.3 %	10,755	31.5 %

* - The district in the first plan is identical to the district in the second plan.
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SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

CONGRESSIONAL DISTRICTS
PLANC220 Compared with PLANC185
2010 General Election

PLANC220	PLANC185		Total Population	%A	%B	%H	%BH	%O	Total Voter Registration	SSVR-T	Turnout	TO/VR
	34	30.3 %	211,420	18.1	2.0	79.5	81.2	0.7	106,763	71.4 %	31,833	29.8 %
16			698,490	12.6	3.3	83.2	85.7	1.7	337,013	69.7 %	77,478	23.0 %
	16	89.1 %	622,202	13.9	3.6	81.5	84.3	1.8	304,133	67.7 %	72,618	23.9 %
	23	10.9 %	76,288	2.1	0.6	96.7	97.0	0.9	32,880	88.3 %	4,860	14.8 %
17			698,358	64.2	11.4	21.5	32.5	3.3	370,571	9.9 %	155,087	41.9 %
	17	69.5 %	485,633	58.8	14.8	23.0	37.3	3.9	249,521	10.9 %	106,516	42.7 %
	25	30.5 %	212,725	76.5	3.6	18.0	21.4	2.1	121,050	7.9 %	48,571	40.1 %
18			698,358	16.0	38.0	42.9	79.9	4.1	338,673	17.7 %	121,326	35.8 %
	2	21.3 %	149,010	28.6	11.7	56.3	67.2	4.2	64,127	25.5 %	26,023	40.6 %
	7	2.7 %	18,626	14.7	4.8	77.4	81.3	4.1	4,726	36.3 %	1,564	33.1 %
	9	3.2 %	22,293	8.8	72.9	16.2	87.9	3.3	14,663	4.9 %	5,230	35.7 %
	18	66.3 %	463,202	12.4	40.1	36.2	83.3	4.3	235,208	13.1 %	82,791	35.2 %
	29	6.5 %	45,227	15.0	17.5	65.8	82.6	2.4	19,949	30.6 %	5,718	28.7 %
19			698,166	57.2	6.9	34.1	40.5	2.4	384,603	23.3 %	138,665	36.0 %
	13	0.8 %	5,385	57.0	3.3	38.7	41.5	1.4	3,494	28.0 %	1,601	47.0 %
	19	99.2 %	692,781	57.2	6.9	34.1	40.5	2.4	381,259	23.3 %	137,064	36.0 %
20			698,704	23.4	7.8	66.7	73.4	3.1	354,286	52.6 %	106,606	30.1 %
	20	50.9 %	355,757	16.6	4.8	76.8	80.7	2.7	181,346	63.4 %	51,000	28.1 %
	21	10.7 %	74,552	45.8	8.5	40.8	48.4	5.8	40,343	26.5 %	16,117	39.9 %
	23	5.1 %	35,531	34.7	8.8	54.0	62.0	3.3	12,605	48.8 %	3,936	31.2 %
	28	7.2 %	50,597	39.5	18.9	37.9	55.3	5.2	29,543	23.4 %	10,839	36.7 %
	35	26.1 %	182,267	20.9	9.9	68.0	76.8	2.3	90,449	52.6 %	24,714	27.3 %
21			698,526	68.4	3.3	24.2	27.1	4.5	464,685	13.8 %	225,086	48.4 %
	11	3.3 %	23,313	87.5	0.8	10.3	11.0	1.5	16,860	5.1 %	8,895	52.8 %
	20	5.0 %	34,777	43.3	7.4	39.1	45.9	10.8	16,881	29.4 %	5,931	35.1 %
	21	59.9 %	418,578	70.4	2.9	23.5	26.0	3.6	286,117	13.1 %	141,282	49.4 %
	23	13.8 %	96,695	62.8	3.5	27.9	31.0	6.2	63,421	16.6 %	31,943	50.4 %
	25	11.7 %	81,817	81.1	1.4	11.4	12.7	6.2	56,611	5.4 %	28,368	50.1 %
	35	6.2 %	43,346	47.9	7.7	42.2	48.9	3.2	24,795	29.0 %	8,667	35.0 %
22			698,255	44.4	15.9	22.9	38.2	17.5	370,416	13.6 %	168,112	45.4 %
	9	12.3 %	85,570	19.0	38.7	26.2	63.8	17.2	36,939	14.4 %	15,487	41.9 %
	14	2.8 %	19,559	58.9	9.4	21.8	30.6	10.5	10,697	12.5 %	4,548	42.5 %
	22	84.9 %	593,126	47.5	12.8	22.4	34.7	17.7	322,780	13.5 %	148,077	45.9 %
23			698,227	36.5	5.2	66.4	70.8	2.7	372,386	52.2 %	121,994	32.8 %
	16	10.9 %	76,286	21.3	8.2	68.8	75.6	3.0	35,723	48.8 %	9,648	27.0 %
	20	34.7 %	242,488	38.3	8.9	57.3	63.0	4.6	125,611	41.6 %	40,816	32.5 %
	21	0.9 %	6,057	42.9	6.5	44.7	50.5	6.7	3,577	29.2 %	1,367	38.2 %
	23	49.4 %	345,094	26.7	2.3	70.2	72.0	1.3	194,544	57.6 %	67,072	34.5 %
	28	4.1 %	28,302	2.0	0.4	95.8	96.0	2.0	12,931	98.9 %	3,091	23.9 %
24			698,688	56.6	9.7	21.9	31.2	12.2	383,884	8.6 %	147,566	38.4 %
	6	1.0 %	7,207	2.8	4.4	92.4	95.8	1.4	760	52.4 %	166	21.8 %
	12	13.3 %	93,088	77.7	4.6	13.2	17.5	4.8	57,946	6.7 %	23,160	40.0 %
	24	85.3 %	595,872	54.1	10.6	22.3	32.4	13.5	324,256	8.8 %	123,851	38.2 %
	26	0.4 %	2,521	25.5	3.5	55.8	58.9	15.6	922	20.8 %	389	42.2 %
25			698,147	46.3	9.3	39.8	48.3	5.4	403,105	18.4 %	154,443	38.3 %
	10	16.0 %	111,532	43.7	10.4	40.3	49.9	6.4	58,838	13.2 %	23,579	40.1 %
	21	26.5 %	184,952	68.4	4.9	29.0	33.4	6.2	126,067	15.5 %	49,639	39.4 %
	25	25.6 %	178,479	63.3	10.1	19.9	29.5	7.2	125,984	9.8 %	56,128	44.6 %
	35	32.0 %	223,184	22.2	11.7	64.4	74.9	2.9	92,216	37.3 %	25,097	27.2 %
26			698,517	68.0	8.0	17.3	25.0	7.1	381,848	7.5 %	138,312	36.2 %
	12	16.6 %	115,649	67.7	7.9	16.6	23.9	8.4	58,404	10.1 %	20,022	34.3 %
	13	0.6 %	4,011	86.9	0.6	10.5	11.1	2.0	2,543	4.1 %	998	39.2 %
	24	0.7 %	4,873	79.2	3.9	5.9	9.6	11.2	3,298	3.0 %	1,492	45.2 %
	26	80.2 %	560,162	67.4	8.3	17.8	25.7	6.9	309,396	7.1 %	113,095	36.6 %
	33	2.0 %	13,822	83.6	1.0	12.7	13.6	2.8	8,207	5.5 %	2,705	33.0 %
27			698,358	16.3	2.2	80.6	82.4	1.3	335,059	67.8 %	90,513	27.0 %
	27	34.0 %	237,527	25.6	4.6	68.8	72.6	1.7	131,356	57.4 %	40,763	31.0 %
	34	66.0 %	460,831	11.6	1.0	86.8	87.6	1.0	203,703	74.4 %	49,750	24.4 %
28			698,545	14.7	1.3	83.4	84.4	0.9	314,024	70.9 %	89,372	28.5 %
	15	26.5 %	184,990	23.7	2.2	73.1	75.0	1.3	86,270	58.4 %	26,956	31.2 %
	28	70.6 %	493,458	9.6	0.6	89.4	89.7	0.8	215,905	78.4 %	57,852	26.8 %
	34	2.9 %	20,097	57.1	10.1	32.4	41.6	1.2	11,849	23.4 %	4,564	38.5 %
29			698,453	12.4	11.1	75.7	86.0	1.7	345,150	58.8 %	70,274	20.4 %
	18	1.9 %	13,193	7.0	30.7	61.3	91.1	1.9	5,269	31.4 %	1,292	24.5 %
	29	83.4 %	582,287	10.1	11.1	77.9	88.2	1.7	280,320	53.9 %	56,854	20.4 %
	36	14.7 %	102,973	26.1	8.5	64.7	72.5	1.4	39,561	37.5 %	12,128	30.7 %
30			698,706	16.9	42.8	39.2	81.2	1.9	340,693	13.4 %	115,254	33.8 %
	5	4.4 %	31,020	36.2	20.3	42.1	61.7	2.1	12,847	16.3 %	4,154	32.3 %
	6	5.1 %	35,743	7.7	10.0	81.5	90.9	1.4	9,594	40.1 %	2,560	26.7 %
	24	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	30	80.6 %	563,451	11.1	50.3	38.0	87.4	1.5	276,986	12.7 %	94,592	34.2 %
	32	9.8 %	68,492	61.1	8.1	25.8	33.4	5.5	41,266	11.0 %	13,948	33.8 %

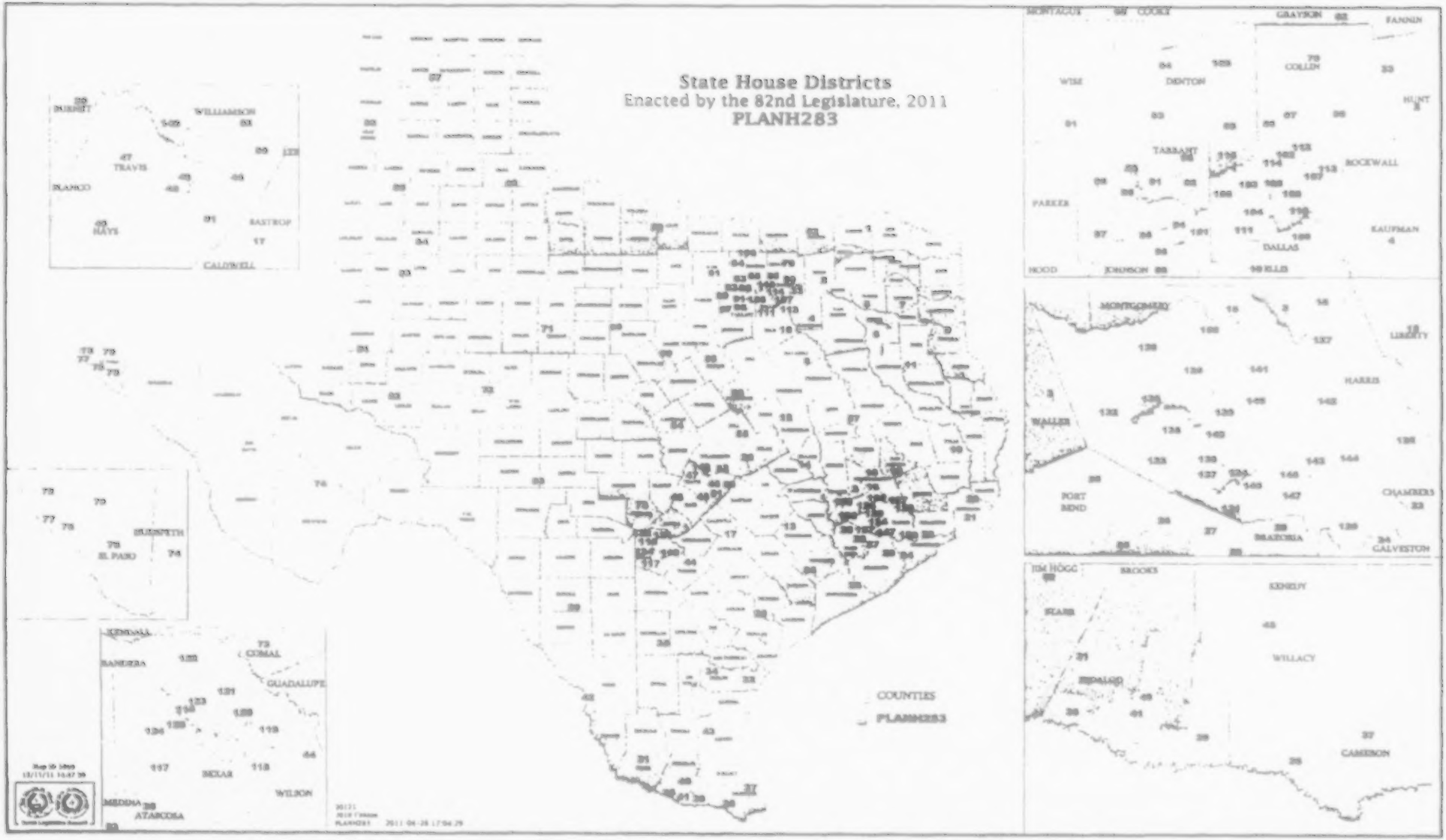
* = The district in the first plan is identical to the district in the second plan.
Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and the results for write-in candidates are summed and included as "write-in". Complete official results for all years are maintained by the office of the secretary of state.
SSVR-T = Total Spanish surname voter registration

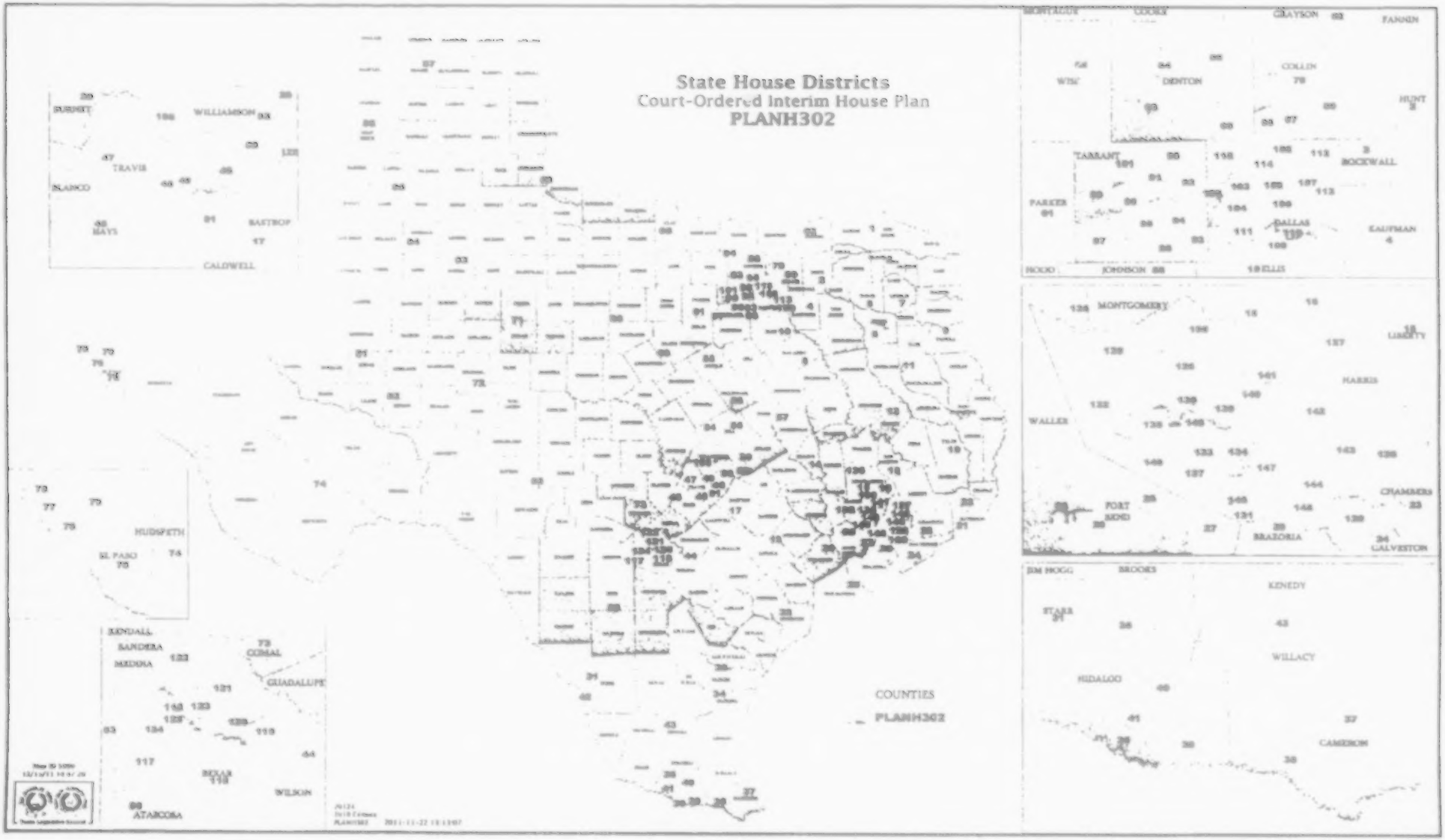
Plan Overlap Analysis

CONGRESSIONAL DISTRICTS
PLANC220 Compared with PLANC185
2010 General Election

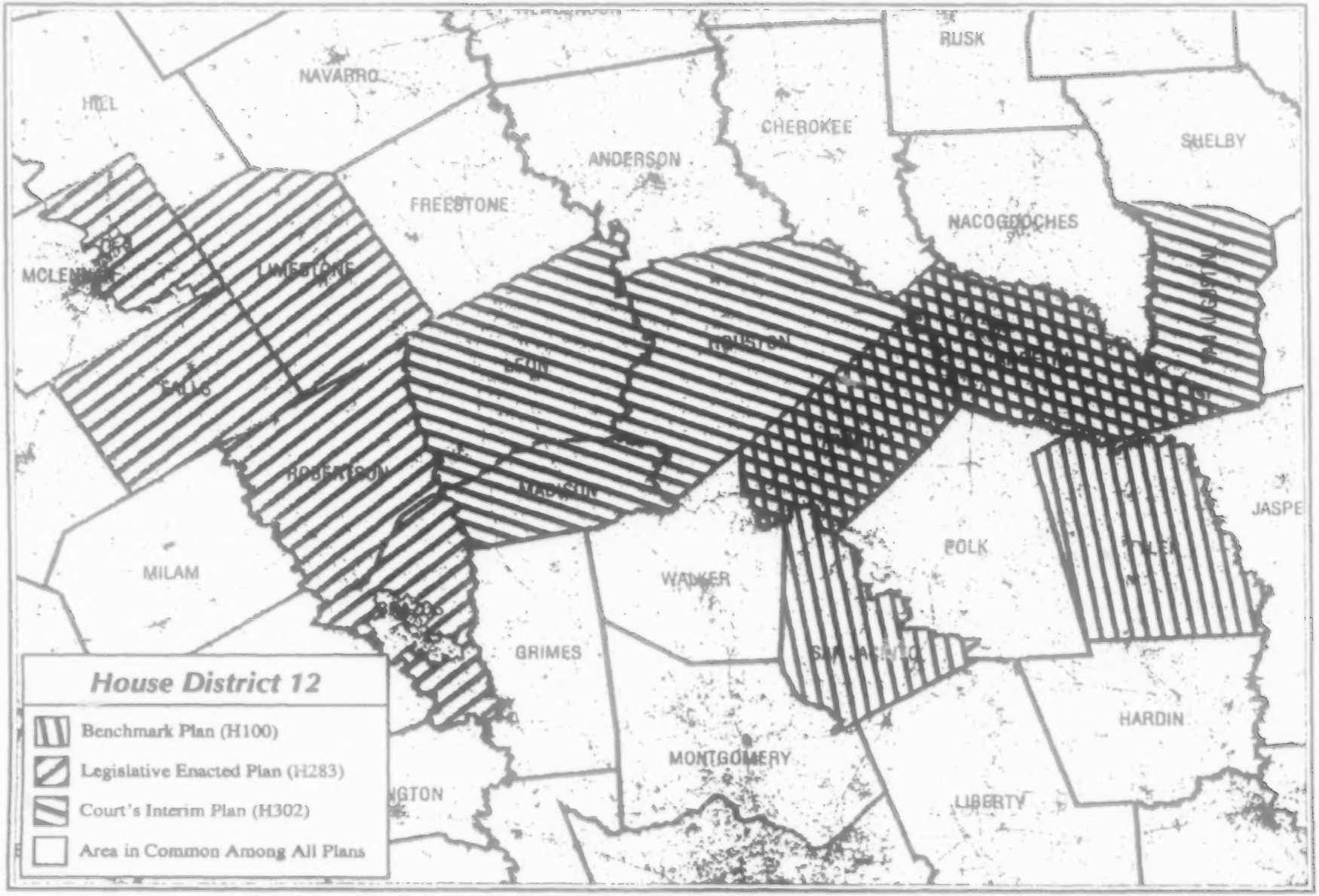
PLANC220	PLANC185		Total Population						Total Voter Registration		Turnout	
			Total	%A	%B	%H	%BH	%O	Total	SSVR-T	Total	TO/VR
31			698,438	58.3	15.7	22.2	36.8	4.7	370,215	11.4 %	136,154	36.8 %
	25	25.9 %	180,799	62.4	16.5	18.1	33.3	4.3	95,023	9.3 %	31,473	33.1 %
	31	74.1 %	517,679	57.2	15.4	23.7	37.9	4.9	275,192	12.2 %	104,681	38.0 %
32			698,727	51.6	13.4	26.9	39.8	8.5	378,857	8.7 %	160,258	42.3 %
	3	0.1 %	460	85.7	0.7	10.0	10.7	3.7	268	4.1 %	87	32.5 %
	5	0.9 %	6,481	24.5	39.9	32.0	71.3	4.3	2,829	8.9 %	910	32.2 %
	6	2.4 %	16,933	7.7	4.2	87.8	91.5	0.8	3,673	50.7 %	987	26.9 %
	24	11.1 %	77,423	48.4	12.6	33.8	45.9	5.7	41,177	10.3 %	17,146	41.6 %
	32	85.5 %	597,430	53.6	13.4	24.3	37.3	9.2	330,910	8.0 %	141,128	42.6 %
33			698,917	27.6	27.2	39.6	66.0	6.4	311,793	17.0 %	101,821	32.7 %
	6	8.2 %	57,602	33.6	31.2	23.9	54.2	12.1	28,059	14.0 %	9,615	34.3 %
	12	25.1 %	175,304	18.2	41.4	39.2	79.7	2.1	82,464	12.1 %	26,815	32.5 %
	24	2.3 %	15,747	45.0	23.2	16.6	39.0	16.0	7,942	10.2 %	2,507	31.6 %
	26	14.1 %	98,396	12.6	6.4	79.1	84.9	2.5	28,865	58.2 %	6,509	22.5 %
	33	50.3 %	351,868	34.8	25.6	32.4	57.1	8.2	164,463	13.0 %	56,375	34.3 %
34			698,521	54.7	8.9	33.2	41.4	3.8	402,410	20.0 %	173,461	43.1 %
	2	5.7 %	39,482	63.7	8.7	17.2	25.5	10.8	22,936	9.1 %	11,501	50.1 %
	7	2.0 %	14,246	28.5	23.7	44.2	66.2	5.2	5,383	22.1 %	2,034	37.8 %
	8	2.6 %	18,009	58.1	10.0	24.3	33.8	8.1	8,349	12.3 %	3,629	43.5 %
	10	33.2 %	231,680	59.5	10.8	26.1	36.4	4.1	131,425	11.8 %	63,009	47.9 %
	27	55.7 %	388,965	51.9	7.2	38.7	45.3	2.8	230,530	25.8 %	91,802	39.8 %
	34	0.9 %	6,139	46.3	3.4	50.1	52.8	0.9	3,797	34.5 %	1,486	39.1 %
35			698,539	29.7	9.7	59.6	68.3	2.0	358,194	44.2 %	108,494	30.3 %
	15	11.2 %	78,249	49.9	7.7	40.4	47.4	2.8	41,831	26.9 %	15,671	37.5 %
	20	9.4 %	65,466	8.7	2.4	88.7	90.3	0.9	33,143	79.9 %	7,865	23.7 %
	21	2.1 %	14,349	68.7	4.3	24.5	28.1	3.3	10,620	15.6 %	3,088	29.1 %
	23	20.7 %	144,880	20.3	2.6	76.6	78.5	1.2	63,921	64.1 %	17,521	27.4 %
	27	2.9 %	20,253	50.6	8.0	40.9	48.2	1.2	10,764	23.7 %	4,590	42.6 %
	28	18.1 %	126,131	36.5	21.1	40.9	60.3	3.2	69,610	23.6 %	22,732	32.7 %
	35	35.7 %	249,231	26.9	11.1	61.2	71.2	1.9	128,305	43.0 %	37,027	28.9 %
36			698,466	62.2	10.4	23.4	33.5	4.4	400,830	10.3 %	161,189	40.2 %
	9	1.9 %	13,040	7.4	35.9	56.4	91.3	1.4	6,201	25.0 %	2,340	37.7 %
	14	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	22	12.3 %	85,908	49.0	10.9	27.6	38.0	13.0	48,309	14.5 %	22,439	46.4 %
	29	9.2 %	64,102	14.6	16.8	61.3	77.0	8.4	23,131	35.9 %	7,362	31.8 %
	36	76.7 %	535,416	71.3	8.9	17.4	26.1	2.6	323,189	7.6 %	129,048	39.9 %

* = The district in the first plan is identical to the district in the second plan.
Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and the results for write-in candidates are summed and included as "write-in". Complete official results for all years are maintained by the office of the secretary of state.
SSVR-T = Total Spanish surname voter registration

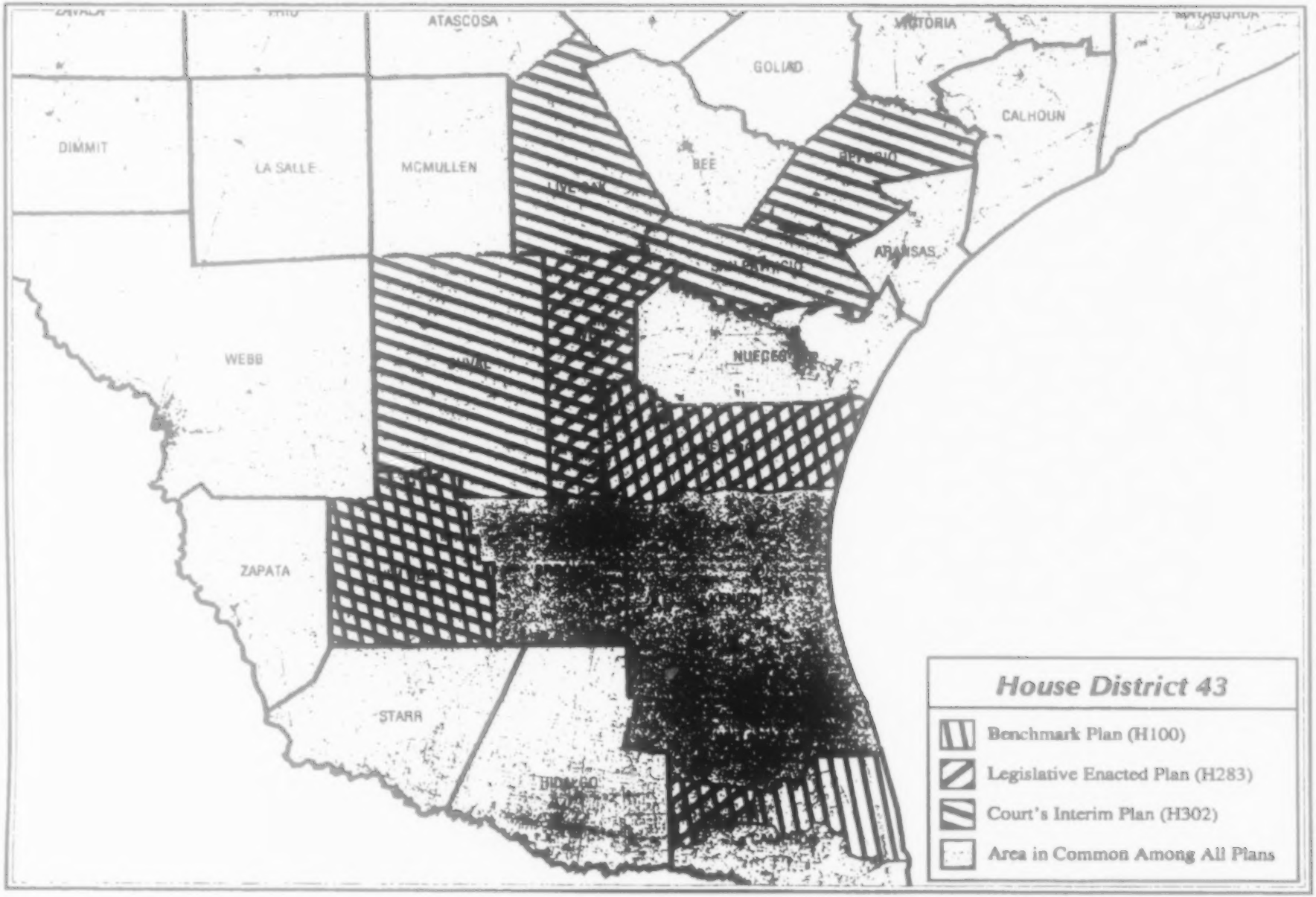

State House Districts
Enacted by the 82nd Legislature, 2011
PLANH283
COUNTIES
PLANH283


State House Districts
Court-Ordered Interim House Plan
PLANH302
COUNTIES
PLANH302
TRAVIS
WILLIAMSON
BASTROP
CALDWELL
HAYS
BURNET
LLANO
EL PASO
HUDSPETH
KENDALL
BANDERA
MEDINA
COMAL
GUADALUPE
BEXAR
WILSON
ATASCOSA
DENTON
COLLIN
TARRANT
DALLAS
ROCKWALL
KAUFMAN
ELLIS
JOHNSON
PARKER
HOOD
MONTGOMERY
HARRIS
WALLER
LIBERTY
CHAMBERS
GALVESTON
BRAZORIA
FORT BEND
JIM HOGG
BROOKS
KENEDY
WILLACY
HIDALGO
CAMERON

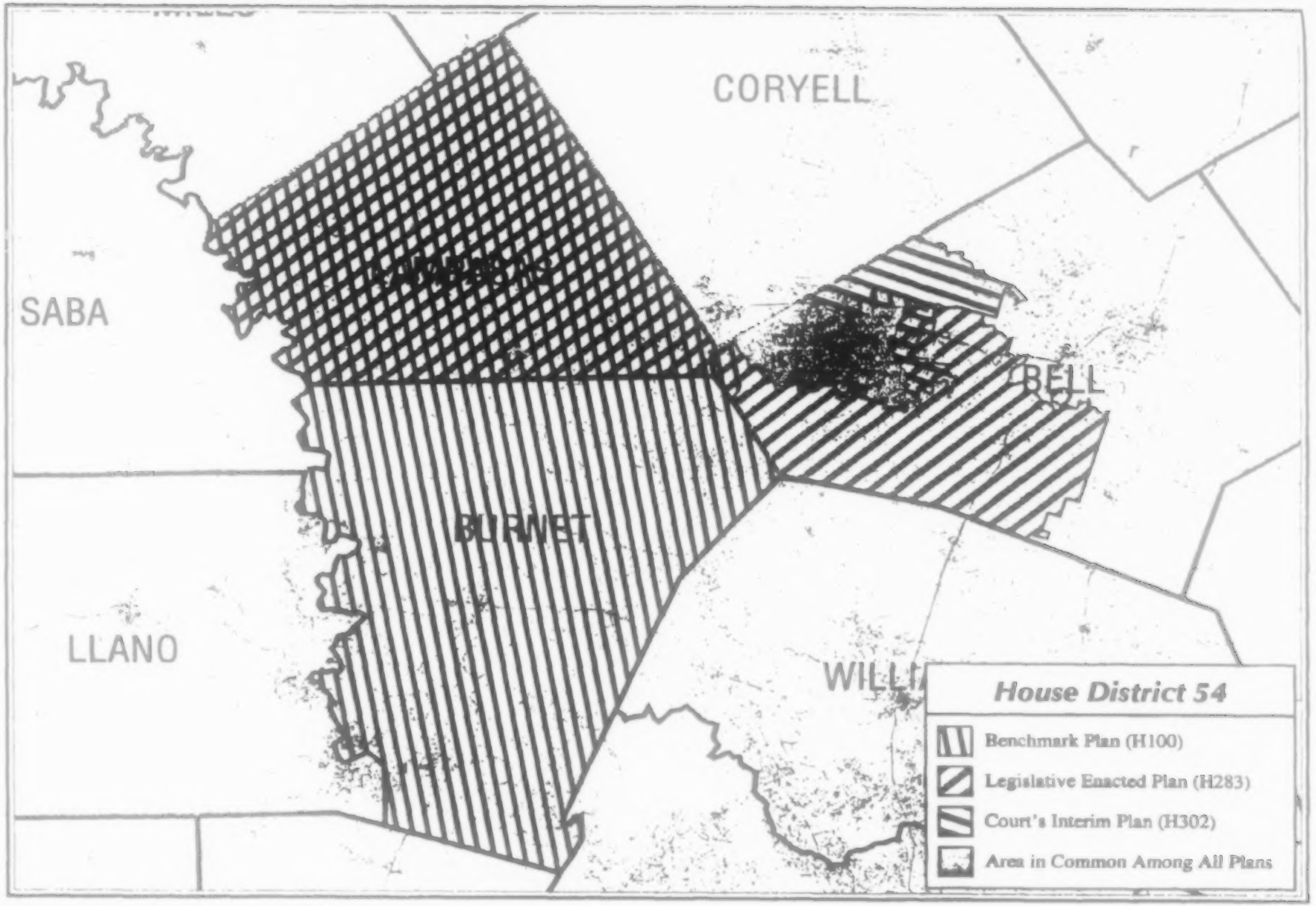
State House Districts
82nd Legislature (2011-2012)
PLANH100
COUNTIES
PLANH100


RUSK
NAVARRO
HILL
CHEROKEE
SHELBY
ANDERSON
FREESTONE
NACOGDOCHES
LIMESTONE
HOUSTON
ROBERTSON
JASPER
POLK
MILAM
WALKER
GRIMES
SAN JACINTO
HARDIN
MONTGOMERY
LIBERTY
House District 12
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans

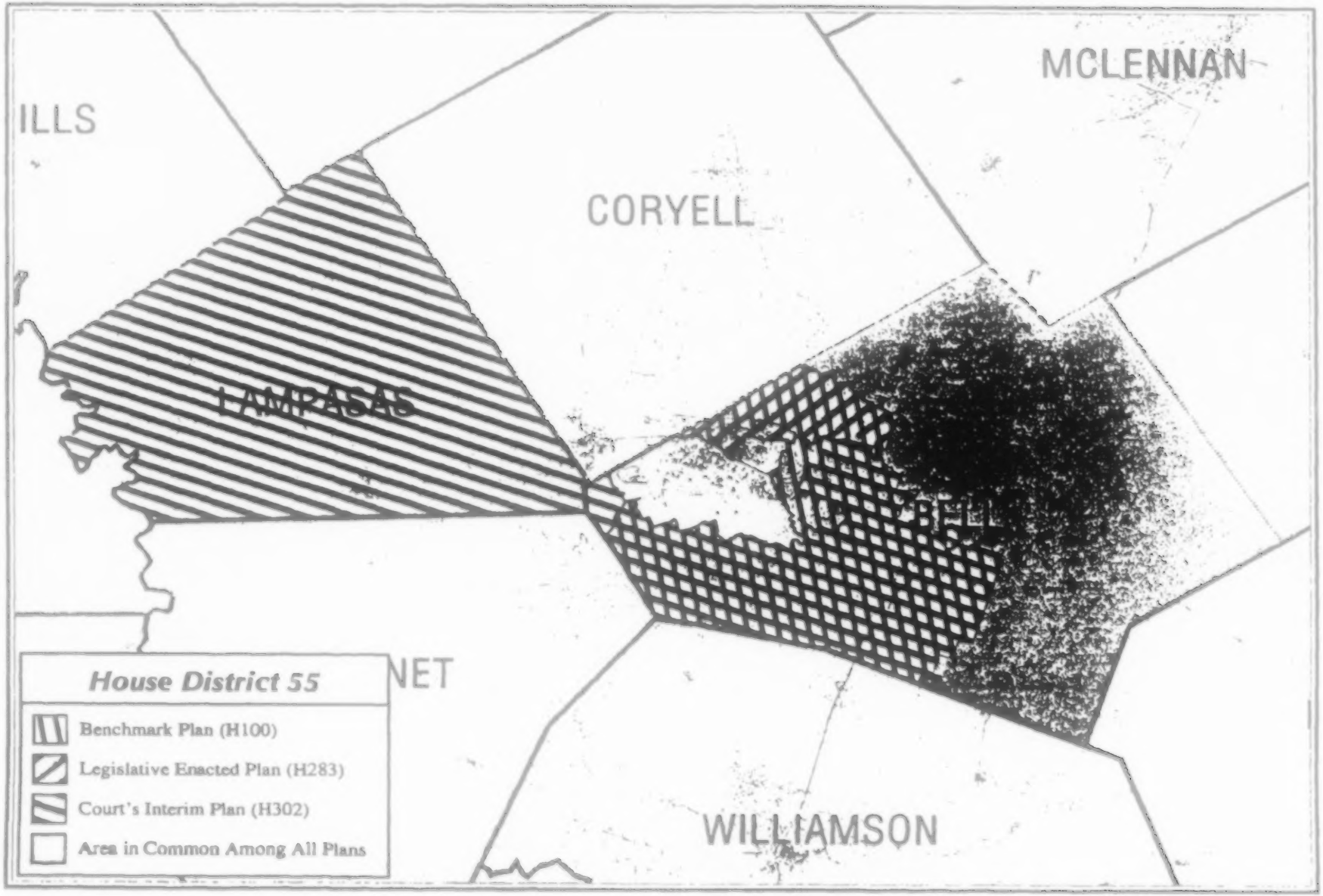
House District 26
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans
RT REND


ATASCOSA
VICTORIA
GOLIAD
CALHOUN
DIMMIT
LA SALLE
MCMULLEN
BEE
ARANSAS
WEBB
ZAPATA
STARR
House District 43
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans

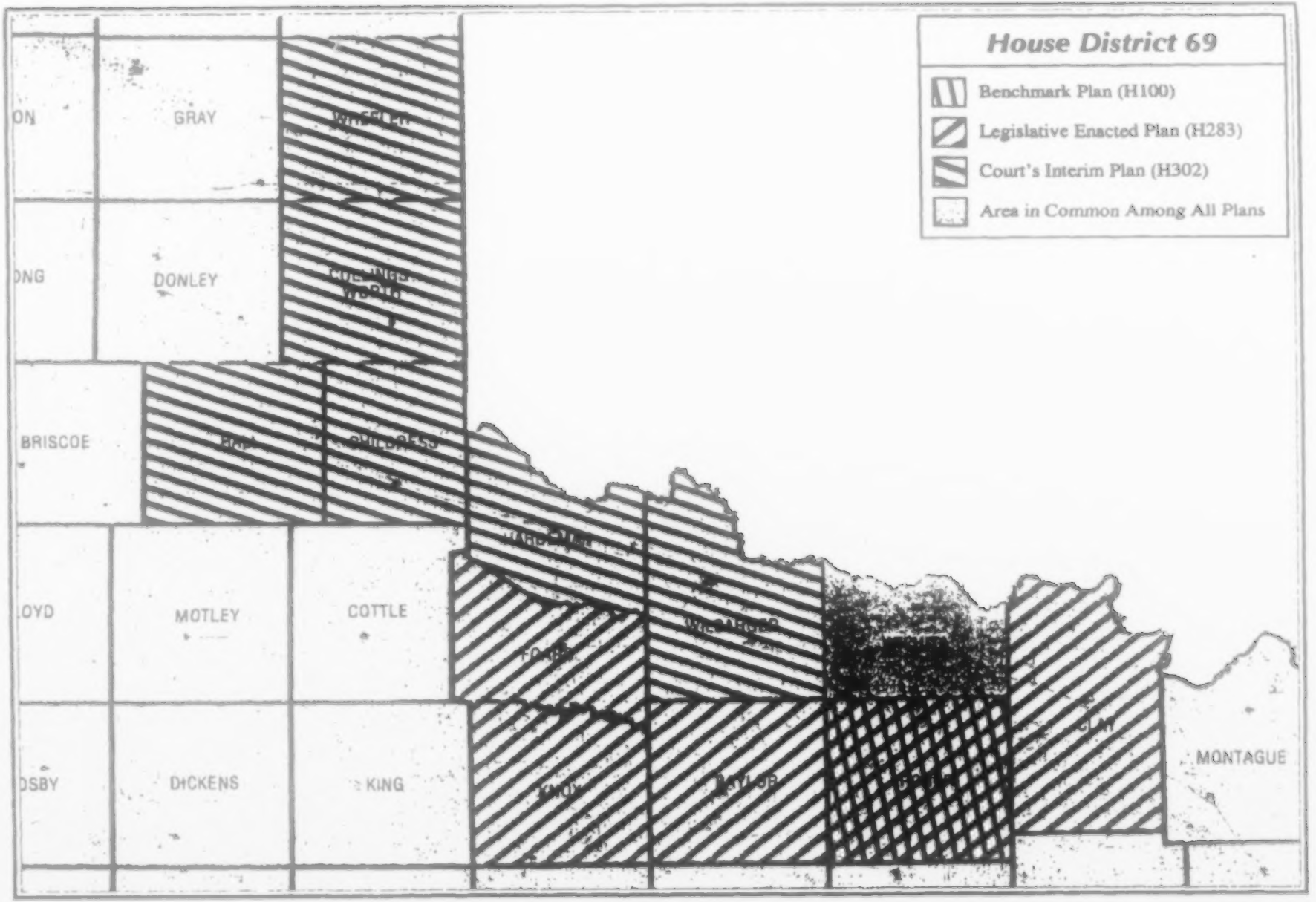
MJA 30


CORYELL
SABA
BELL
BURNET
LLANO
House District 54
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans

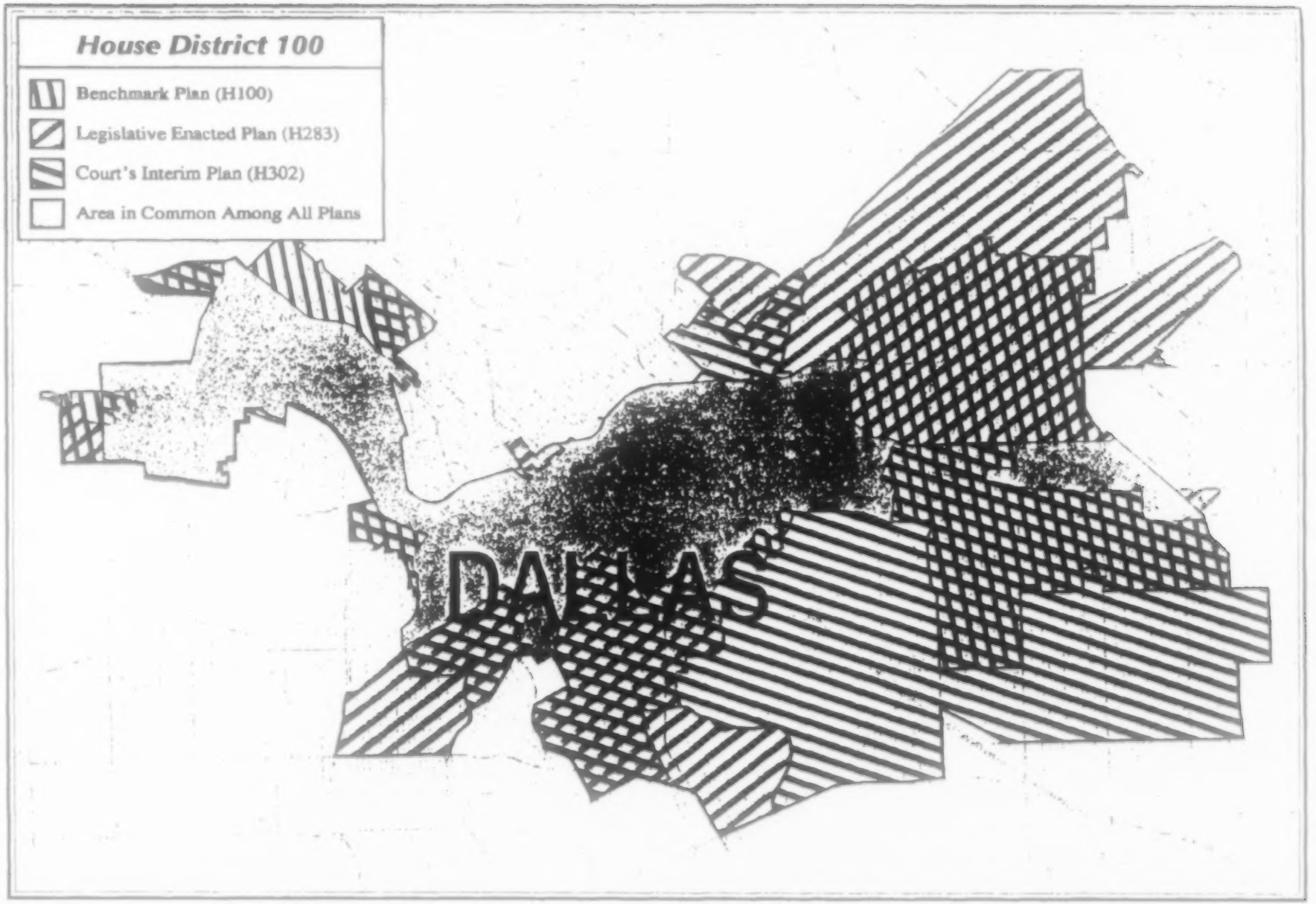
MJA 31


ILLS
MCLENNAN
CORYELL
LAMPASAS
BELL
NET
WILLIAMSON
House District 55
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans

MJA 32


House District 69
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans
GRAY
DONLEY
BRISCOE
MOTLEY
COTTLE
DICKENS
KING
MONTAGUE

House District 80
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans
LAVACA
GONZALES
DE WITT
VICTORIA
GOLIAD
REFUGIO
ARANSAS
SAN PATRICIO
NUECES
KLEBERG
KENEDY
WILSON
LIVE OAK
JIM WELLS
DUVAL
BROOKS
ZAPATA
BARUENA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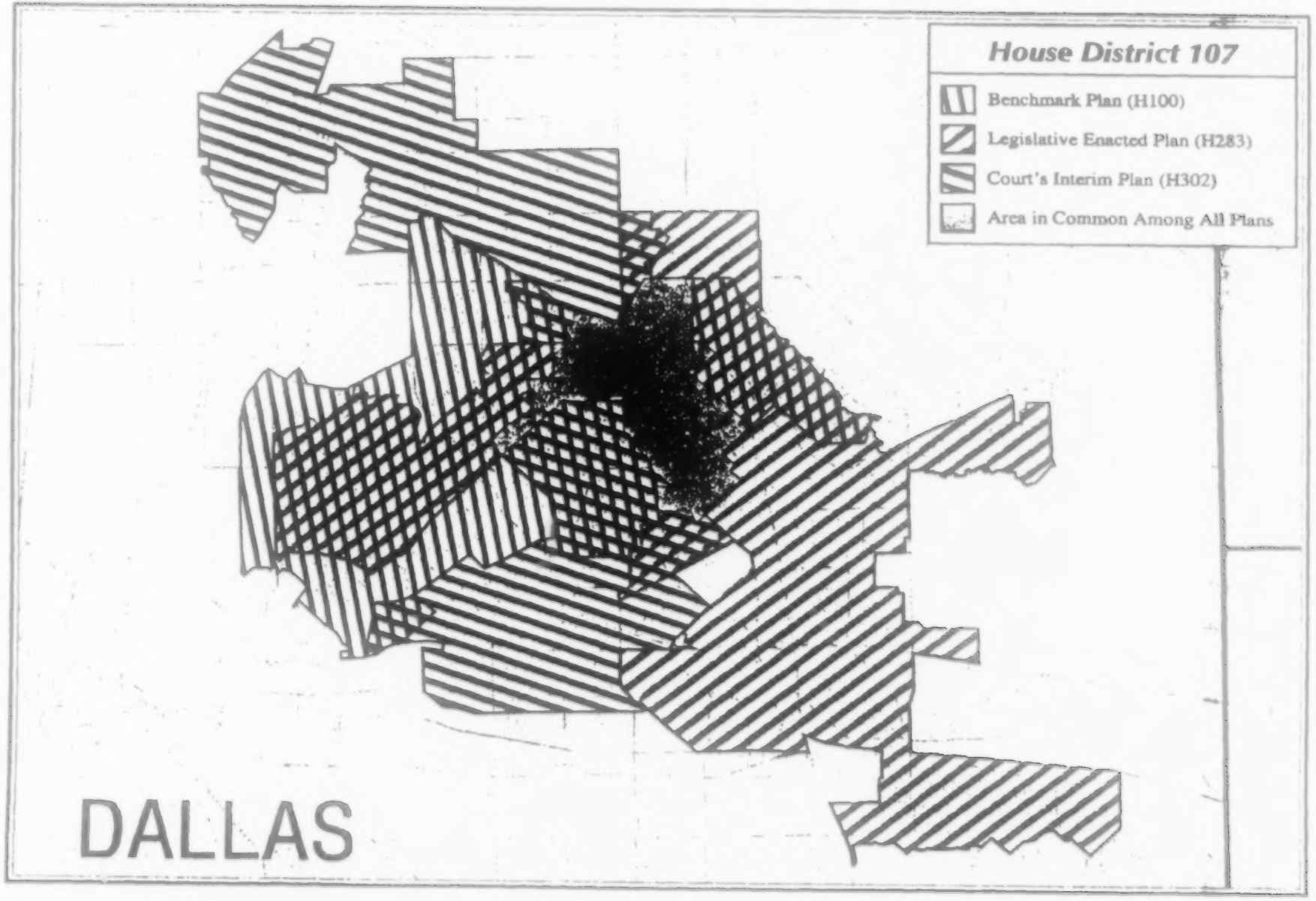
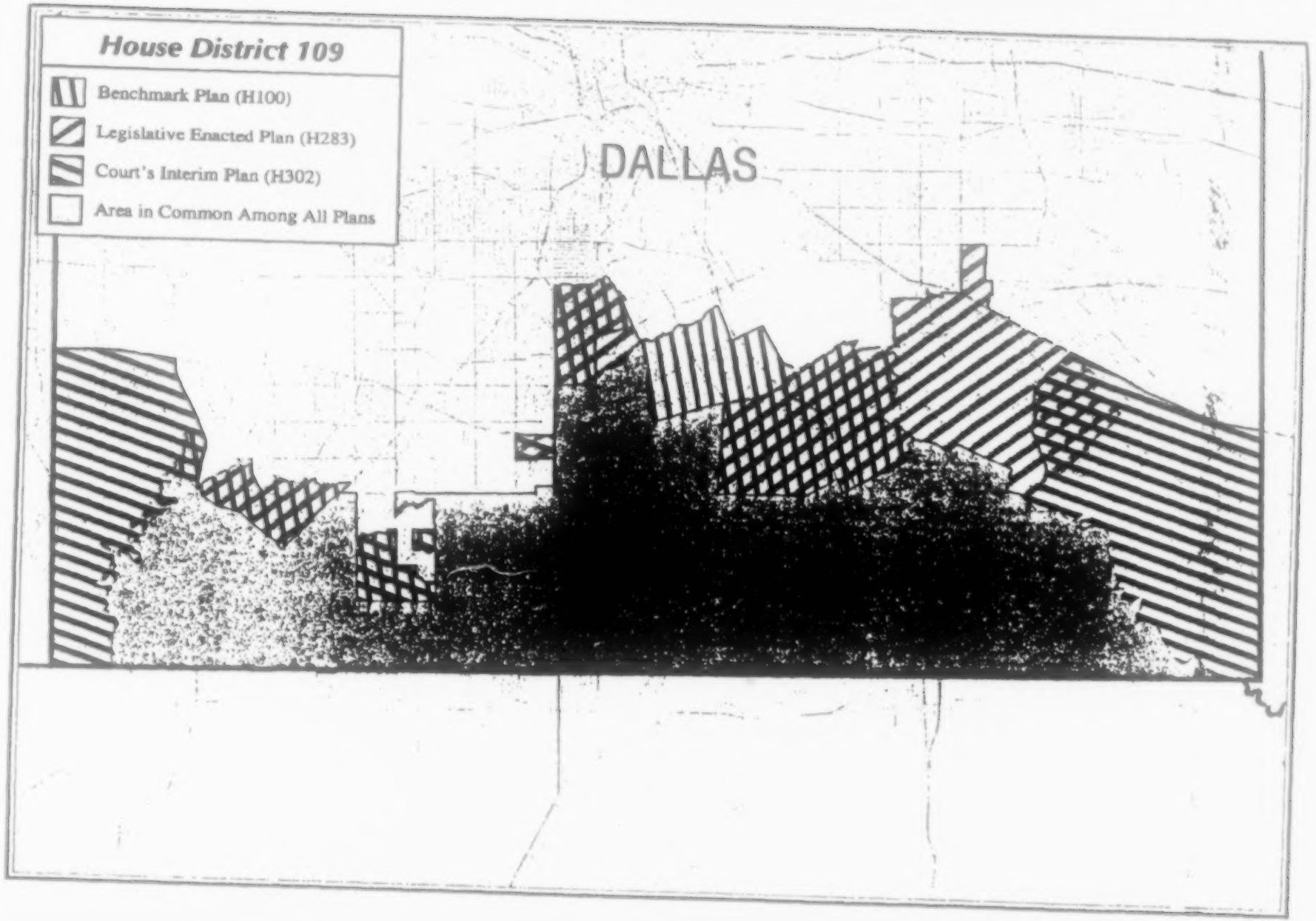
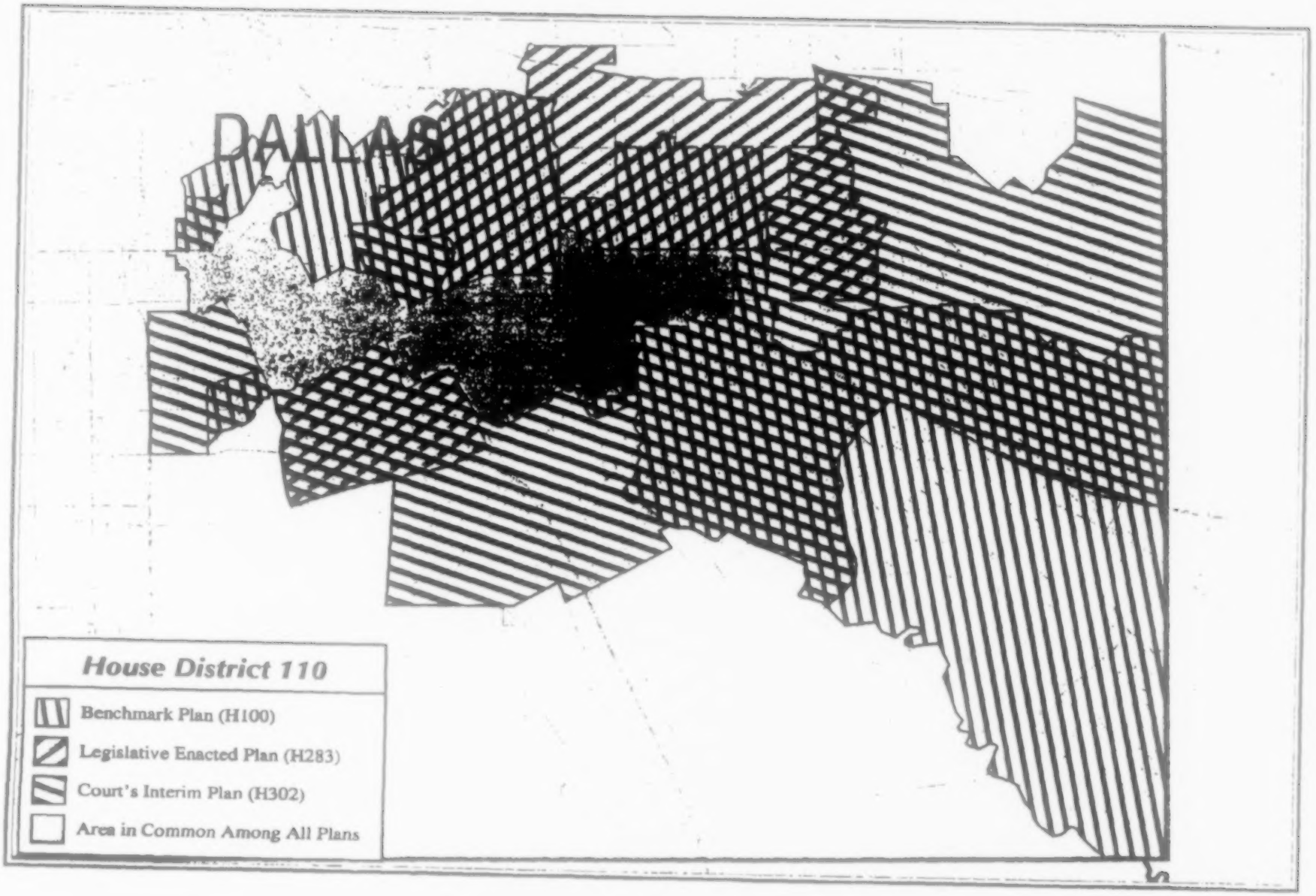
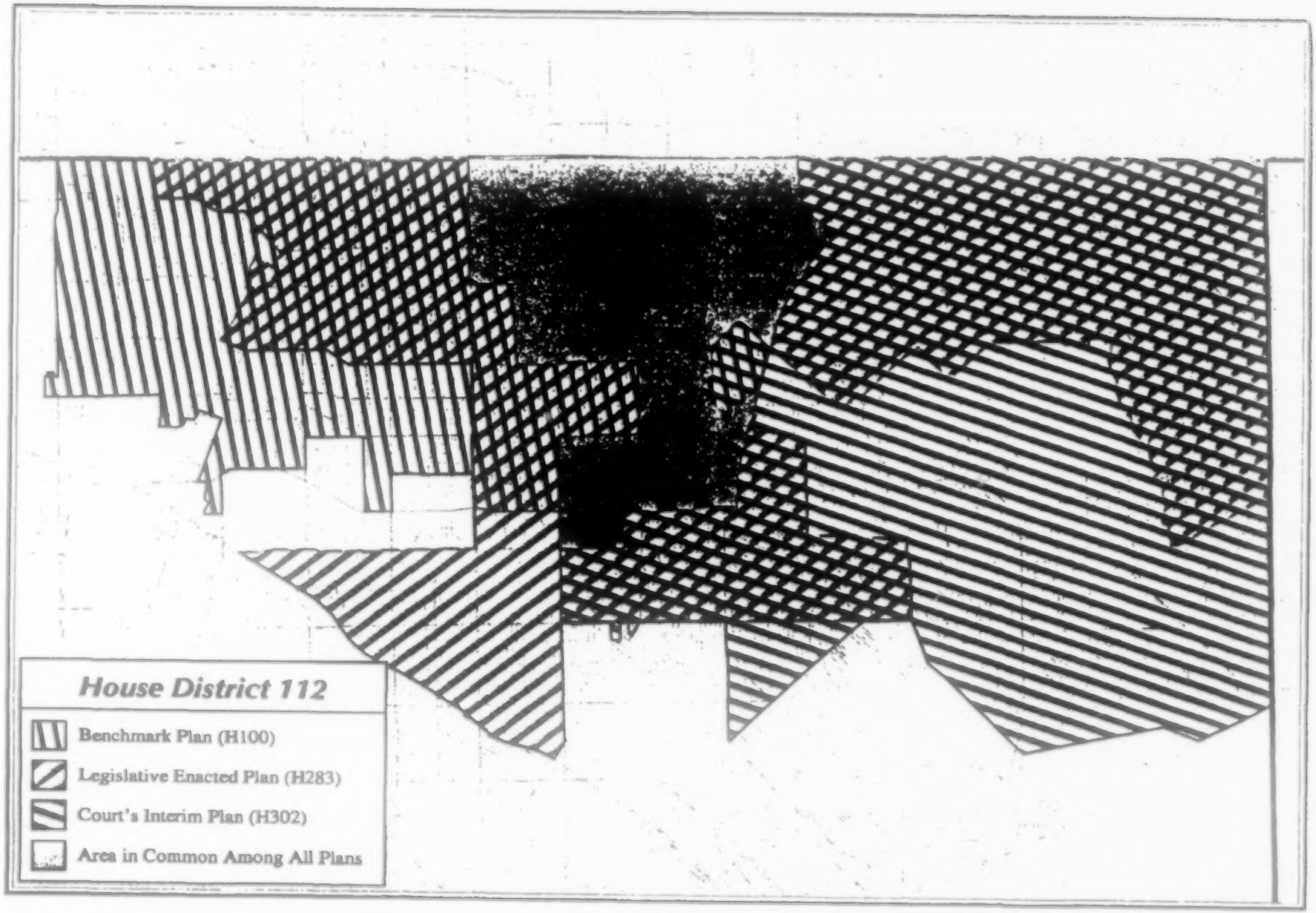
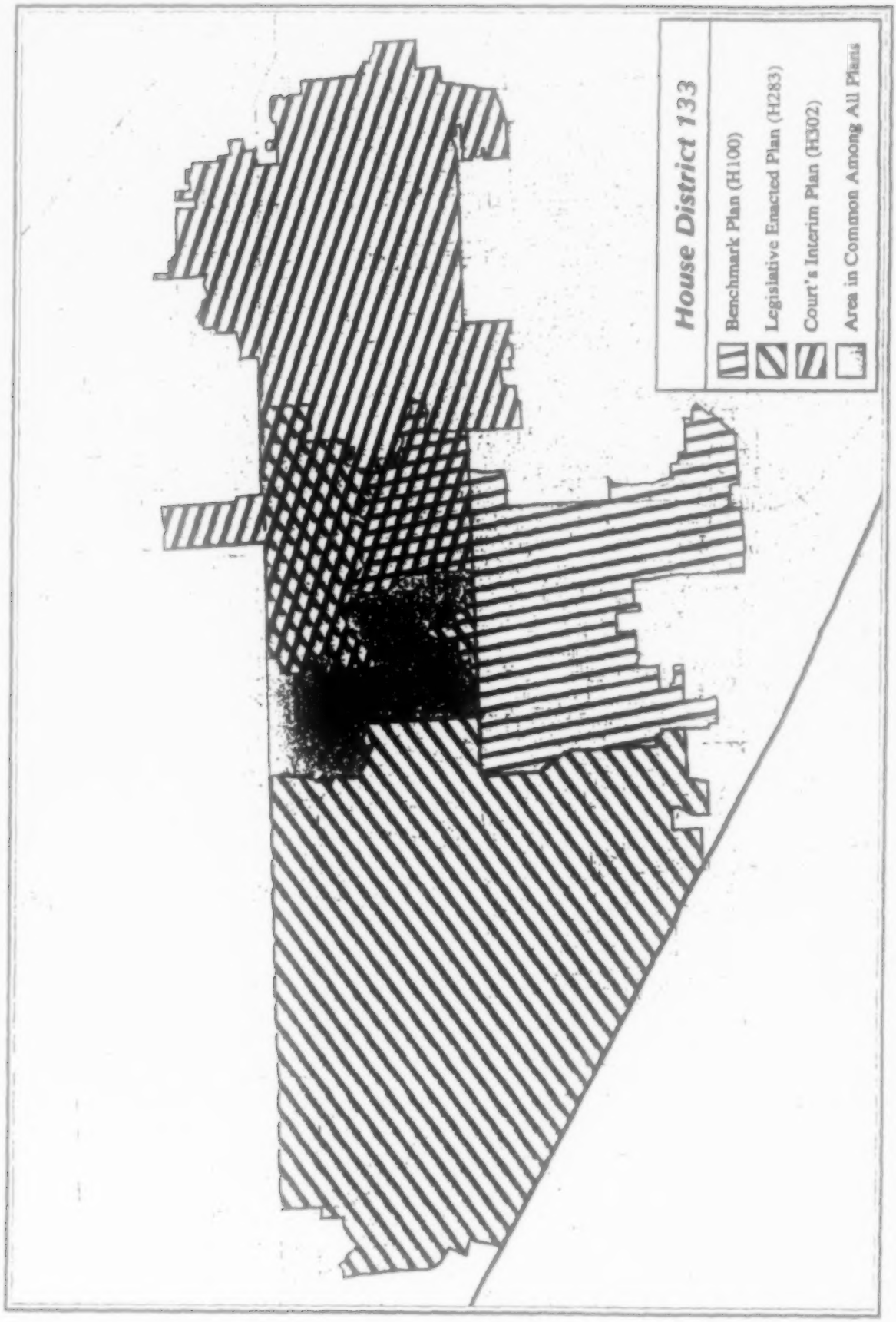
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans
DALLAS


House District 107
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans
DALLAS


House District 109
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans
DALLAS


DALLAS
House District 110
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans


House District 112
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans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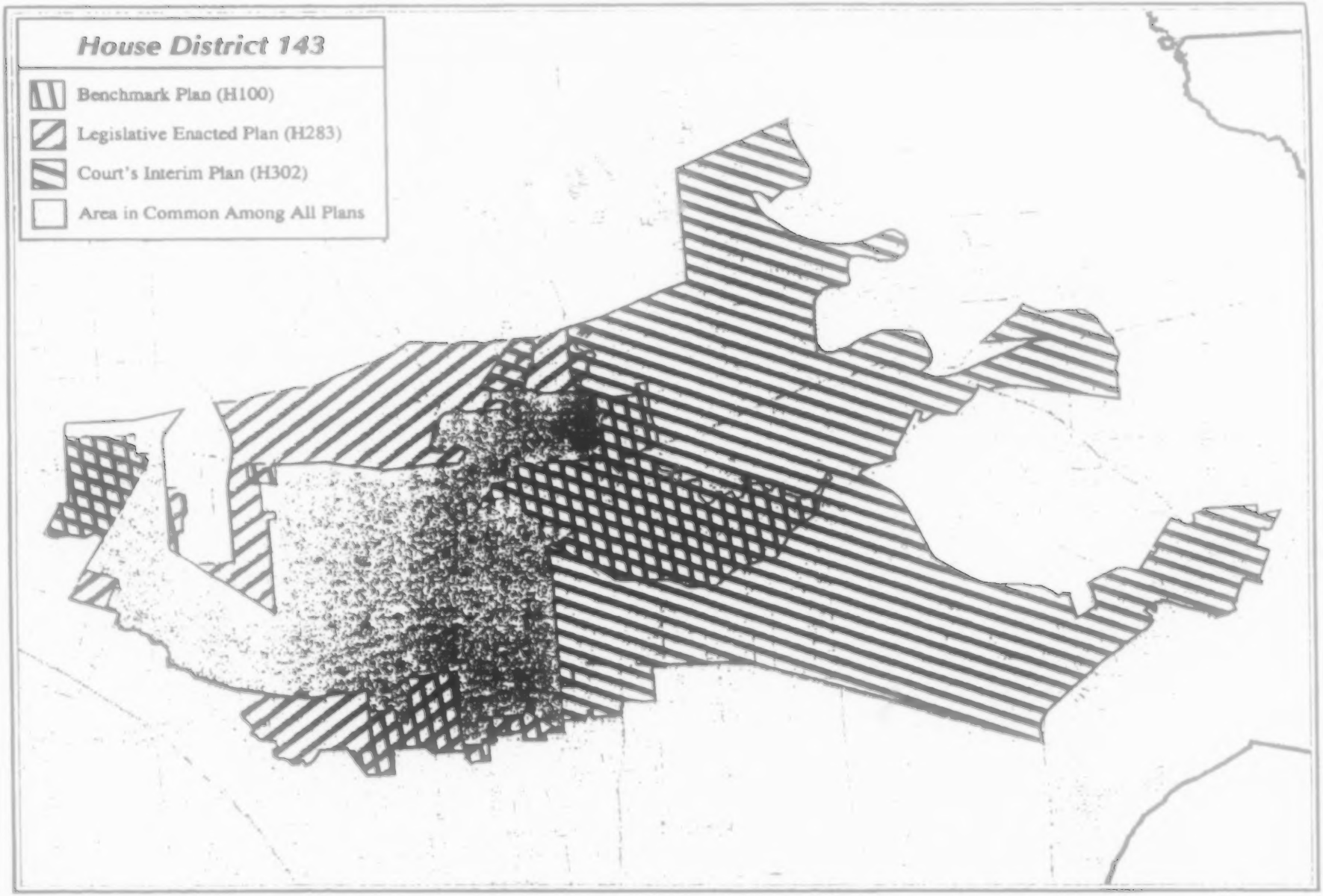
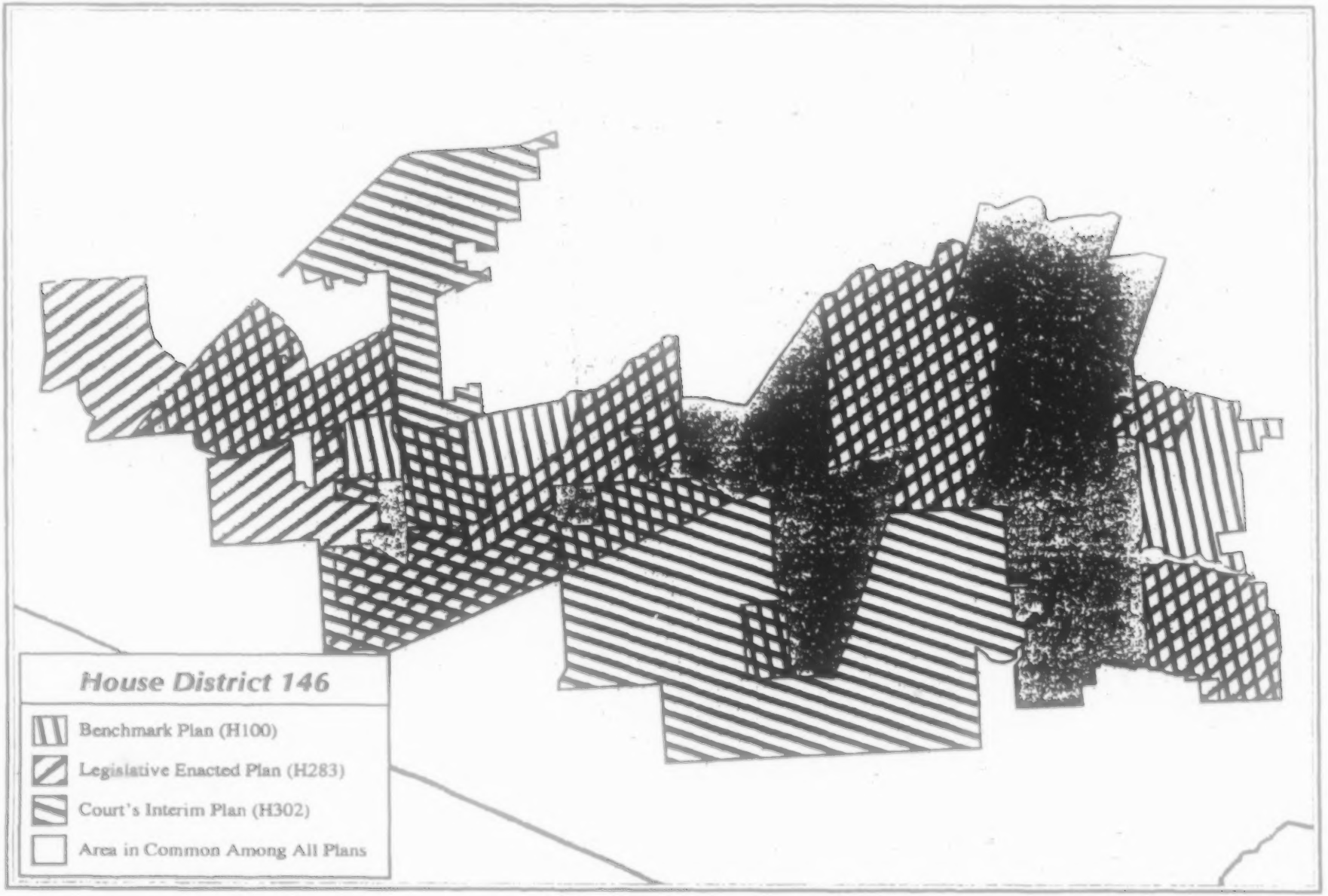
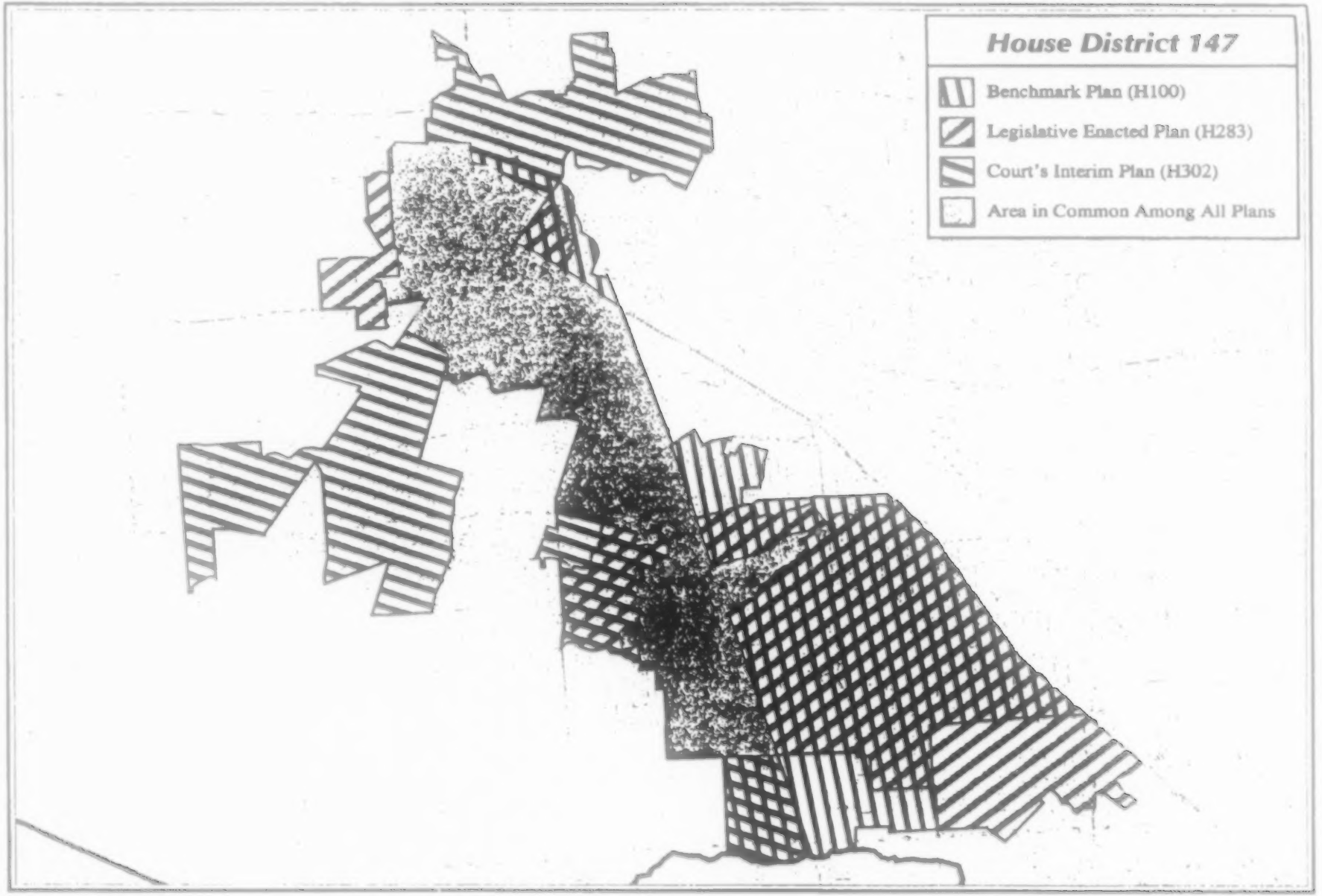
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans


House District 143
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans

MJA 41


House District 146
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans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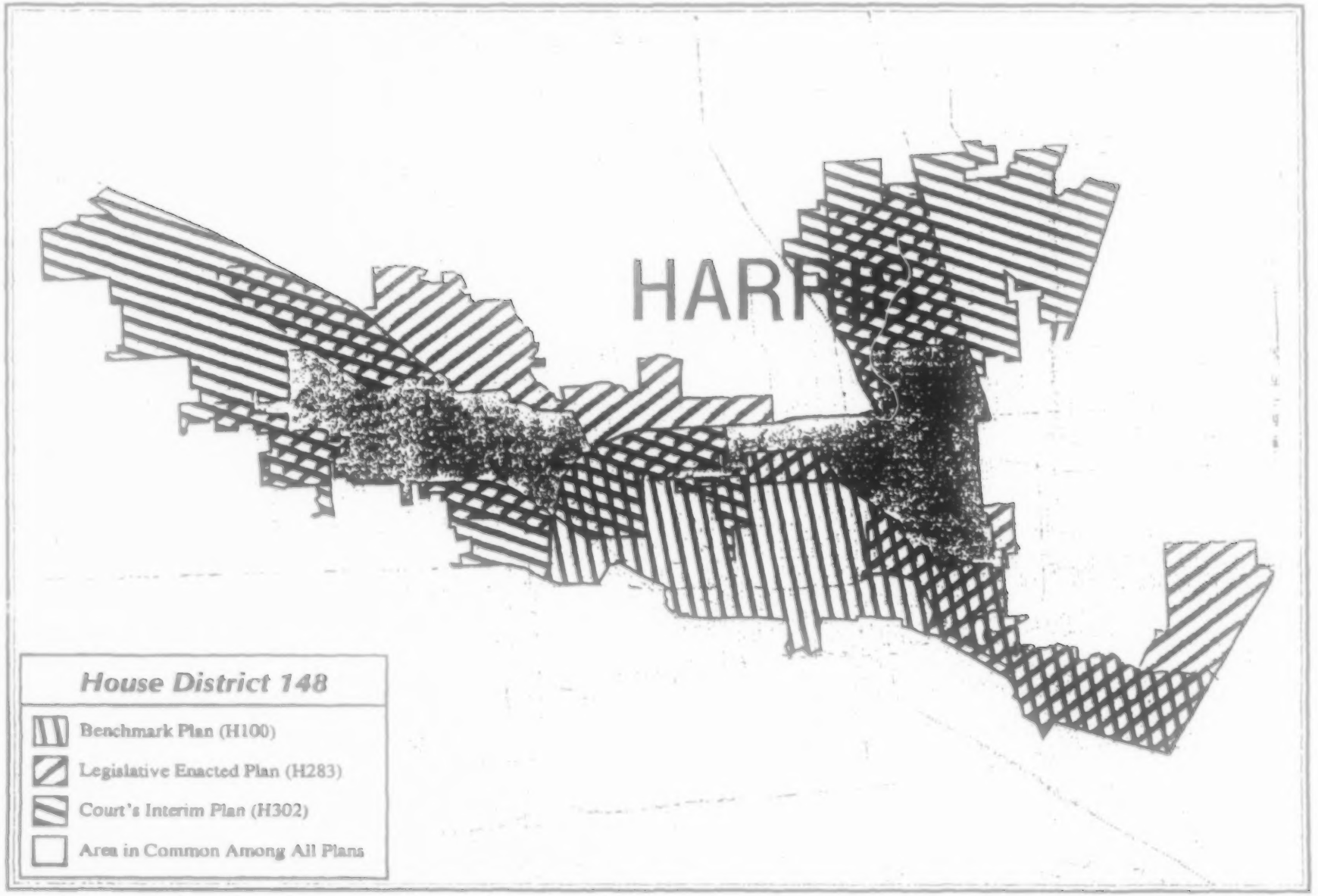
Area in Common Among All Plans


HARR
House District 148
Benchmark Plan (H100)
Legislative Enacted Plan (H283)
Court's Interim Plan (H302)
Area in Common Among All Plans

B. Split Precincts: A Different Kind of "Narrow Tailoring"

Figure 8 C: Capturing as Many Anglos as Possible

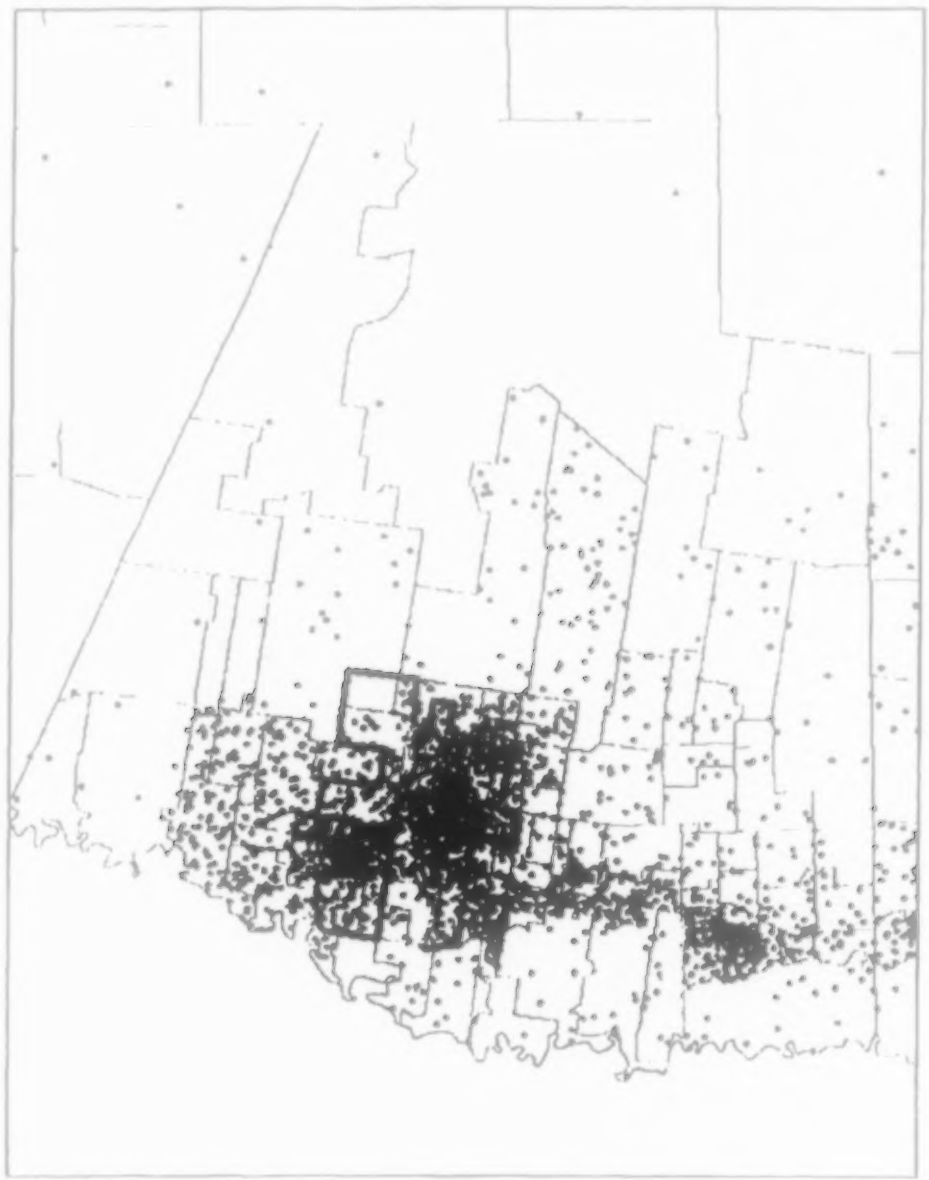


Figure 9: State House District 90 in Tarrant County

A.: The Basic Outline of the Hollowed-Out District

Figure 9 B: Latinos Carefully Drawn In, Others Excluded from District 90

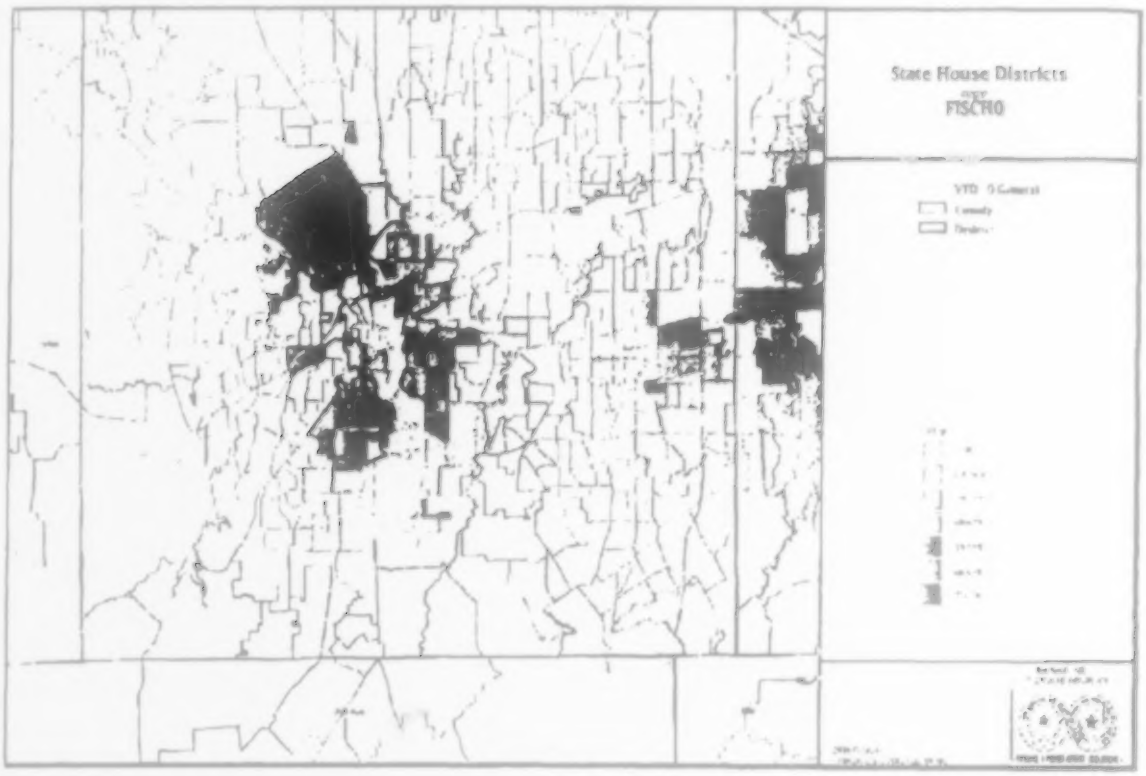


Figure 9 C: State House District 95: What's Left out of District 90

Figure 10: Packing Latinos into One District,

Minimizing them in Another in Dallas

A. State House District 104

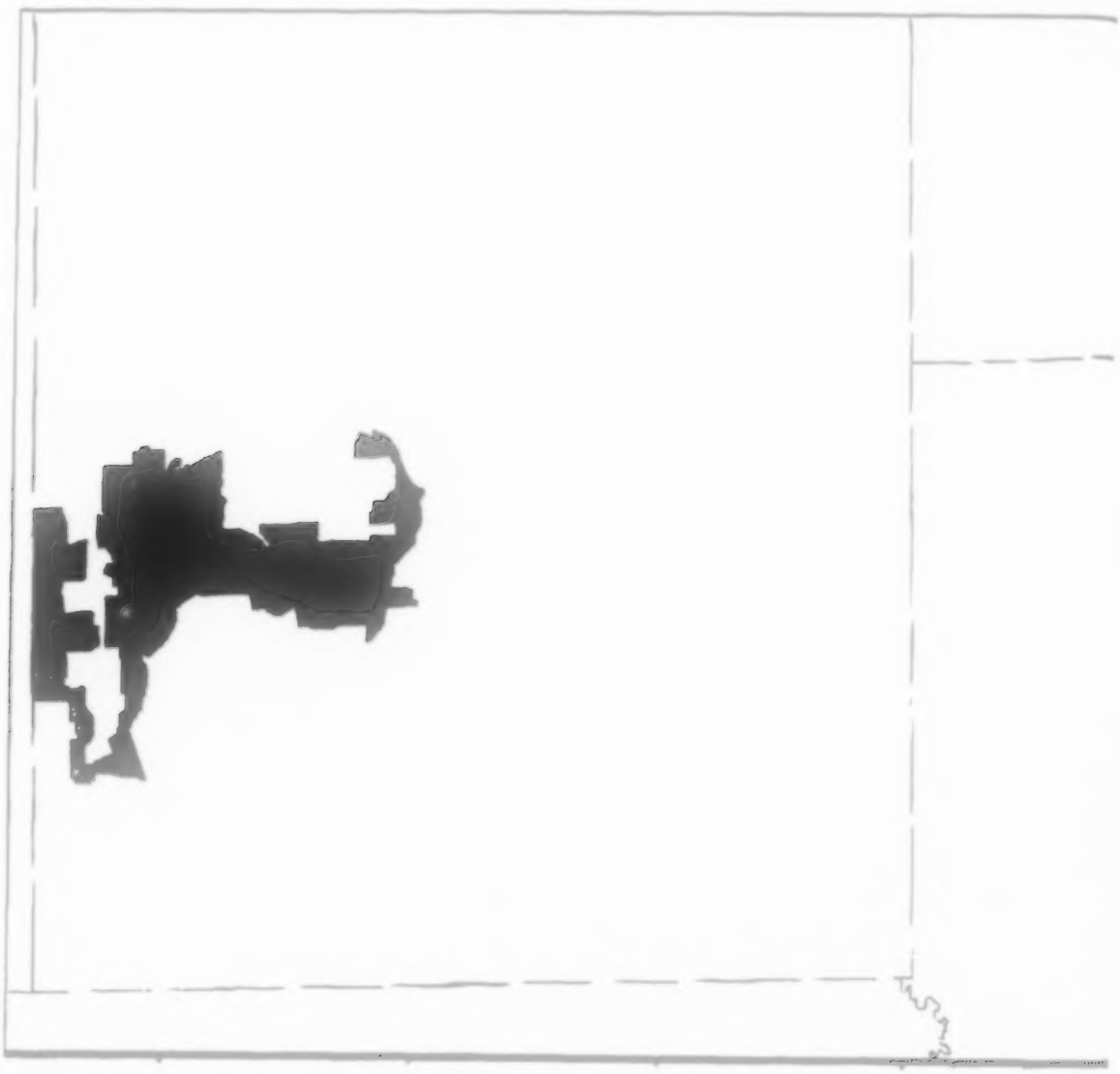
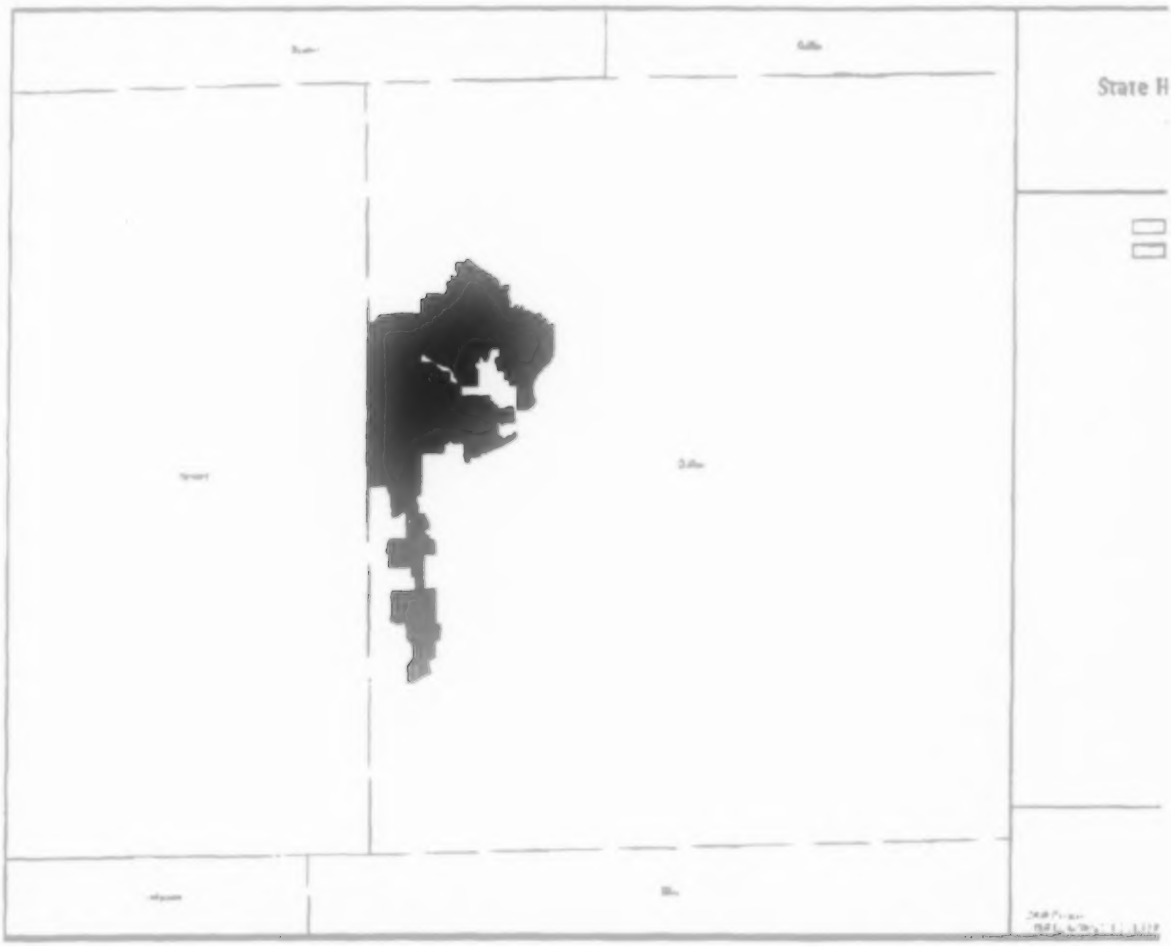
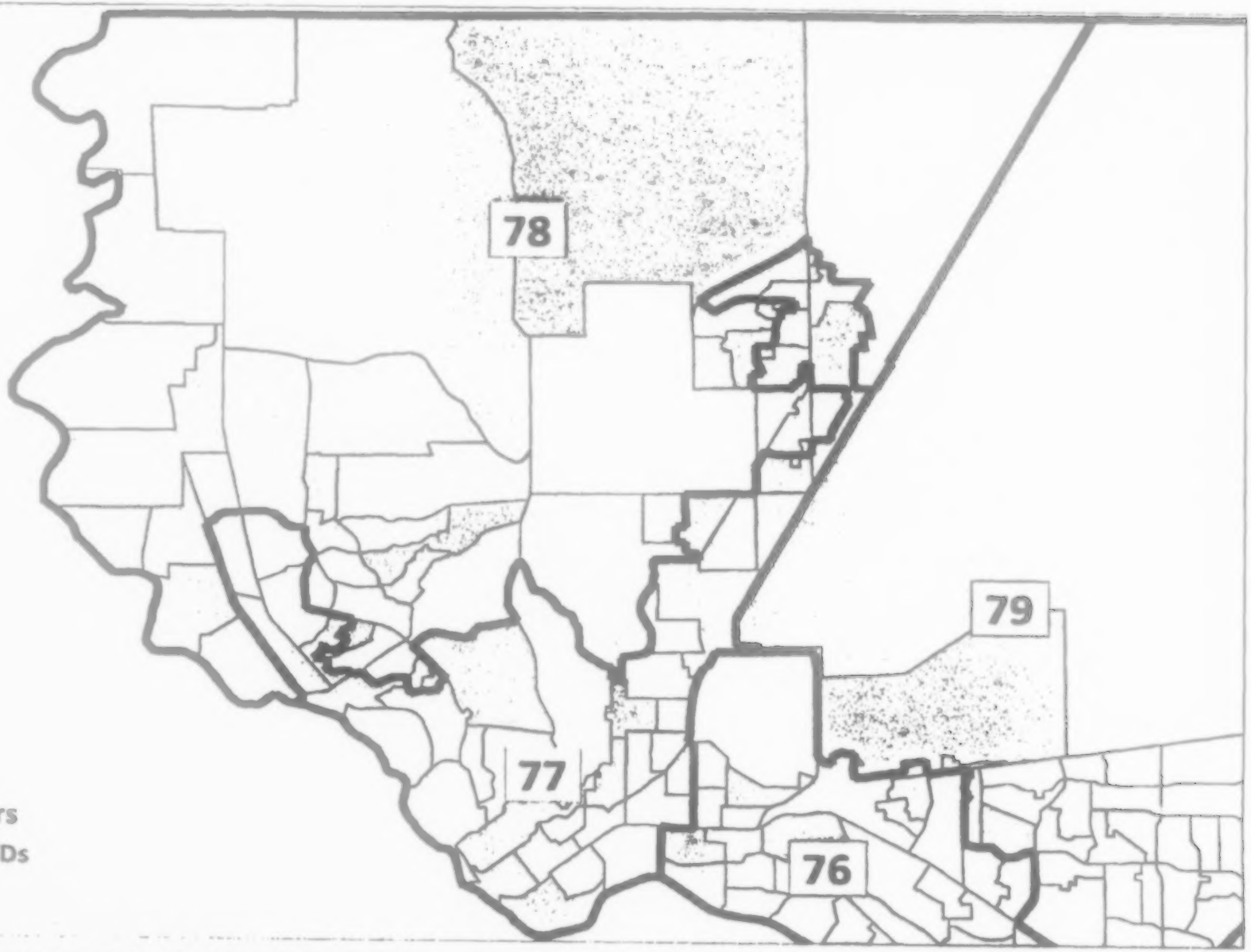


Figure 10 B: District 105, the Missing Sliver in District 104



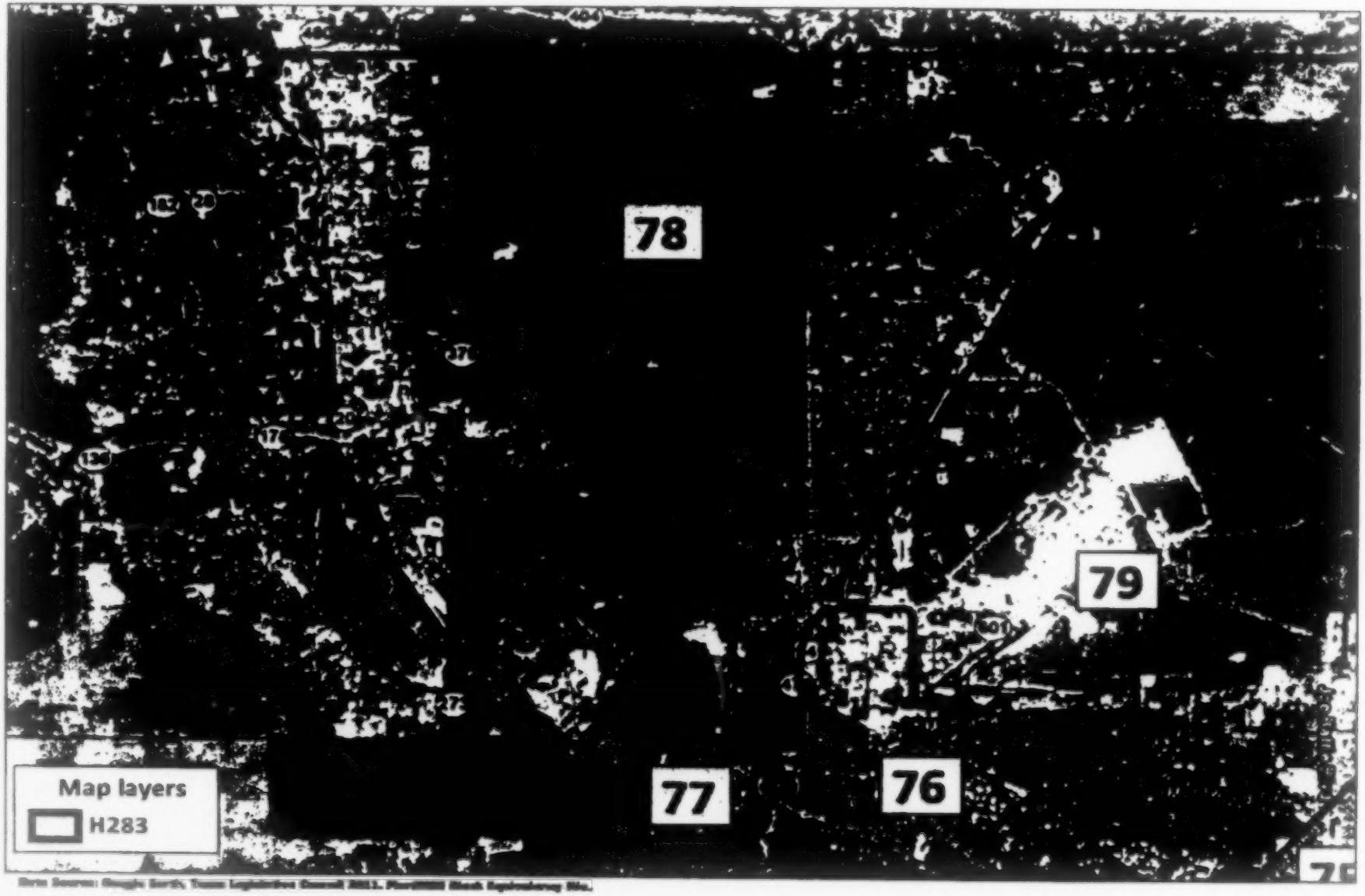
H283 HD78 Zoom



Data Source: Texas Legislative Council 2011. Plan H283 Block Equivalency File and VTD geography layer.

MJA 52

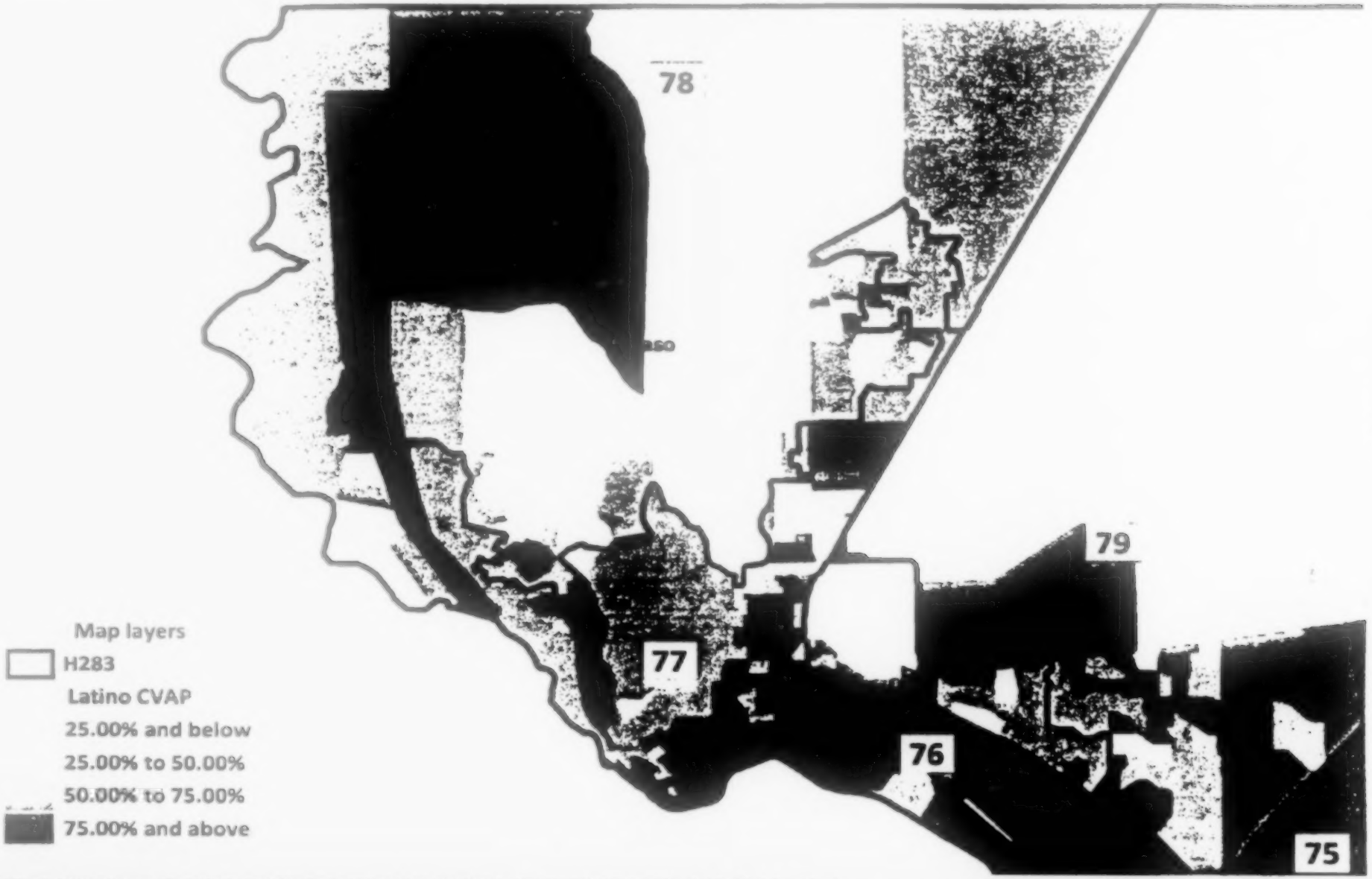
H283 with Google Earth Overlay



Data Source: Google Earth, Texas Legislative Council 2011. Plan[illegible] Block Equivalency file.

MJA 53

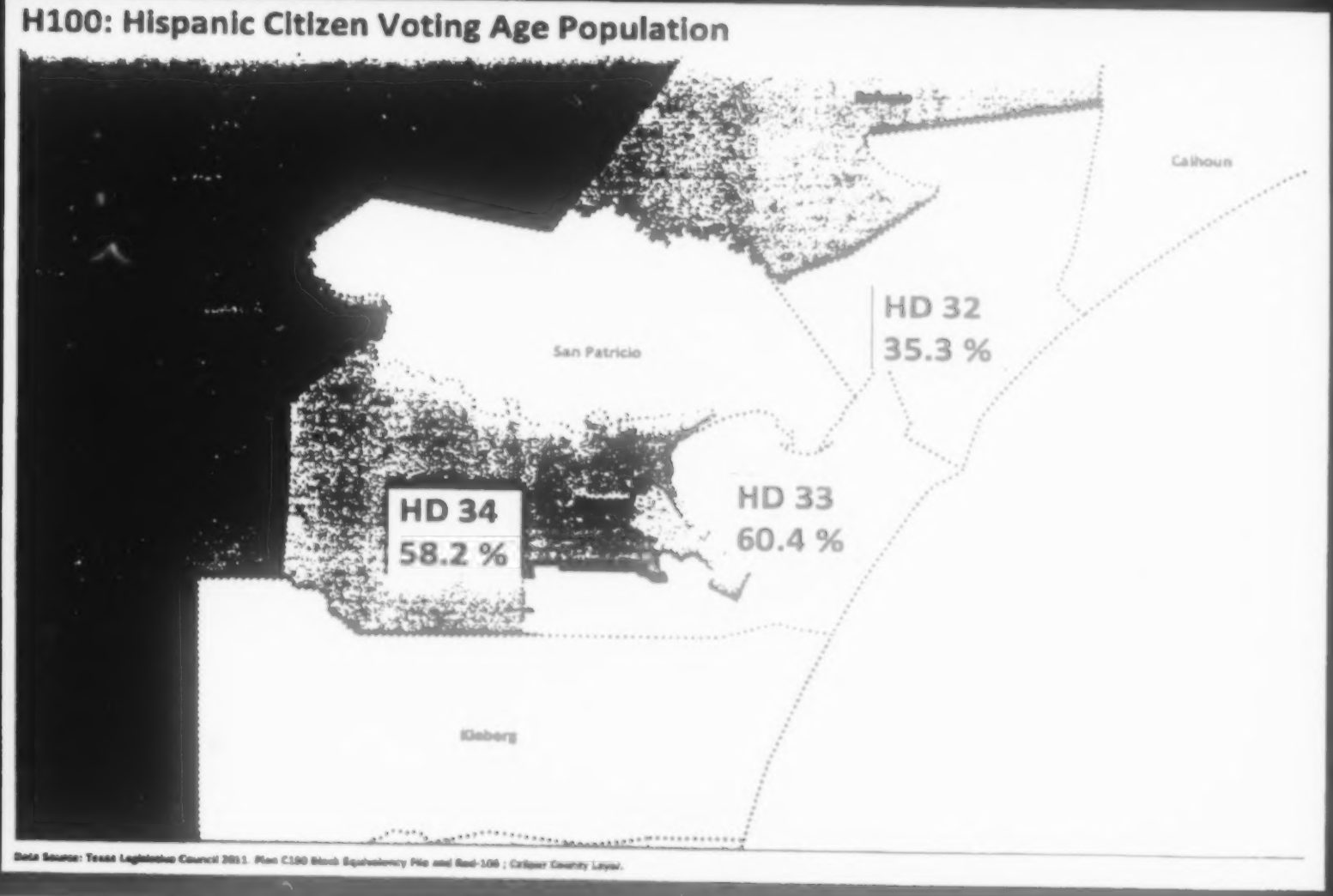
Hispanic Citizen Voting Age Population as a Percentage of Total Citizen Voting Age Population



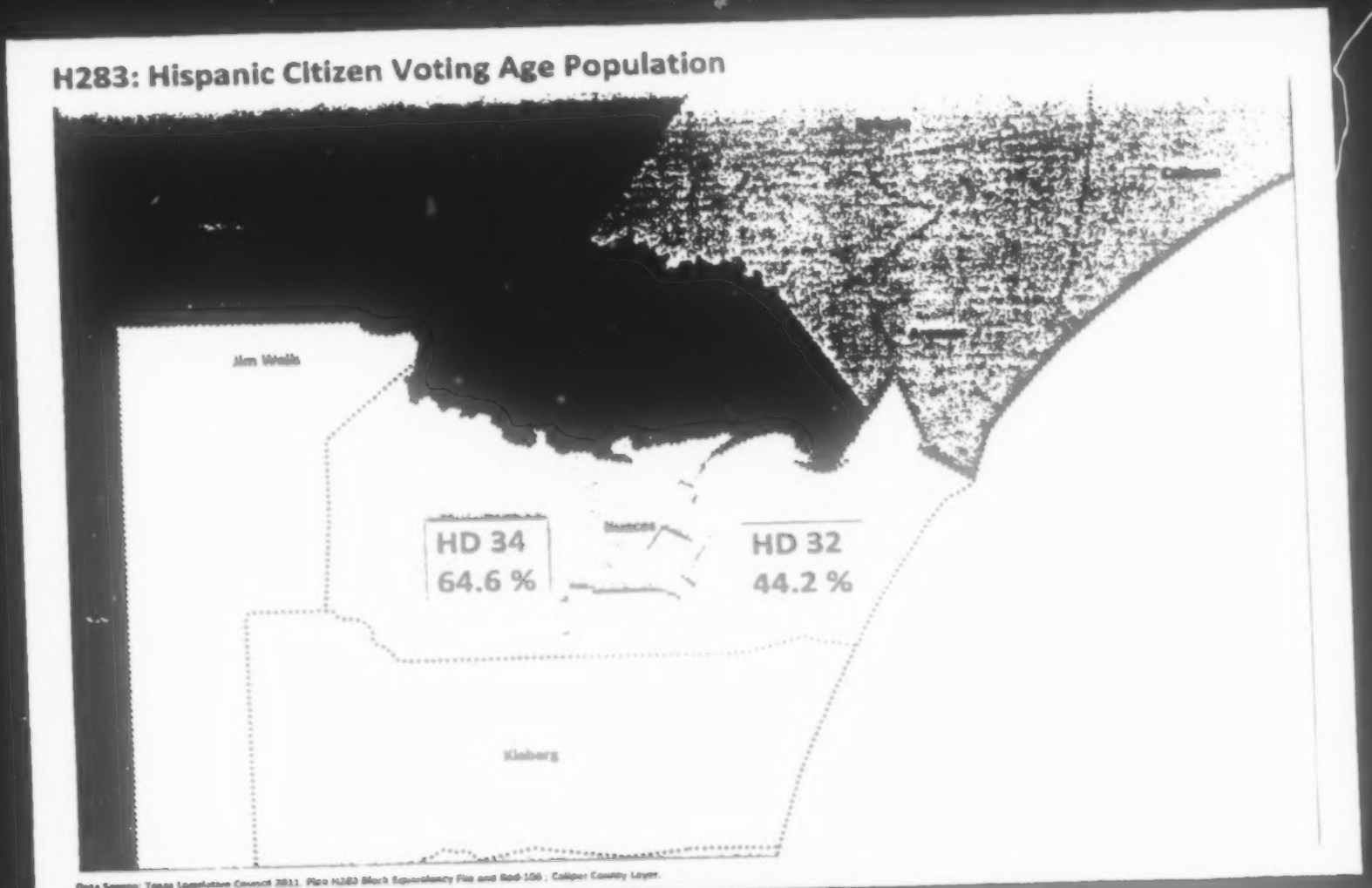
Data Source: Texas Legislative Council 2011. H283 Block Equivalency File. ACS 2005-2009 5-year Estimates. Data is displayed at the Block Group level.

MJA 54

H100 Nueces


H100: Hispanic Citizen Voting Age Population
Calhoun
San Patricio
HD 32
35.3 %
HD 34
58.2 %
HD 33
60.4 %
Kleberg

H283 Nueces



MLA 56

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

			Total Population						Total Voter Registration		Turnout	
PLANH302	PLANH283		Total	%A	%B	%H	%BH	%O	Total	SSVR-T	Total	TO/VR
*1			165,823	70.8	20.1	6.9	26.7	2.5	100,684	1.8 %	41,317	41.0 %
	1	100.0 %	165,823	70.8	20.1	6.9	26.7	2.5	100,684	1.8 %	41,317	41.0 %
*2			173,869	78.2	7.0	12.6	19.4	2.4	103,181	4.1 %	39,699	38.5 %
	2	100.0 %	173,869	78.2	7.0	12.6	19.4	2.4	103,181	4.1 %	39,699	38.5 %
3			170,974	72.7	6.5	16.1	22.3	5.0	94,631	6.5 %	36,960	39.1 %
	33	82.4 %	148,953	71.5	6.9	16.5	23.1	5.5	78,301	6.6 %	30,393	38.8 %
	70	13.2 %	22,632	77.7	4.7	14.8	19.2	3.1	12,280	5.6 %	5,042	41.1 %
	89	4.3 %	7,389	80.3	3.3	13.8	17.0	2.7	4,050	5.7 %	1,525	37.7 %
4			165,345	73.6	9.6	14.9	24.3	2.0	96,347	5.5 %	35,139	36.5 %
	4	100.0 %	165,345	73.6	9.6	14.9	24.3	2.0	96,347	5.5 %	35,139	36.5 %
5			160,041	69.5	11.6	17.5	28.9	1.6	96,960	4.7 %	40,552	41.8 %
	5	99.0 %	158,520	69.8	11.5	17.2	28.5	1.7	96,310	4.7 %	40,299	41.8 %
	6	1.0 %	1,541	34.0	22.0	43.5	64.8	1.2	650	13.5 %	253	38.9 %
6			160,209	59.9	19.8	18.1	37.6	2.5	90,640	5.2 %	39,159	43.2 %
	5	1.1 %	1,733	89.3	3.8	5.0	8.8	2.0	1,253	2.2 %	606	48.4 %
	6	98.9 %	158,467	59.6	20.0	18.2	37.9	2.5	89,387	5.2 %	38,553	43.1 %
*7			161,039	66.0	18.2	14.1	31.9	2.1	95,164	3.6 %	35,333	37.1 %
	7	100.0 %	161,039	66.0	18.2	14.1	31.9	2.1	95,164	3.6 %	35,333	37.1 %
*8			161,098	64.5	15.8	18.5	33.9	1.6	87,396	6.5 %	34,800	39.8 %
	8	100.0 %	161,098	64.5	15.8	18.5	33.9	1.6	87,396	6.5 %	34,800	39.8 %
*9			166,719	78.3	19.3	9.1	28.2	1.5	104,617	2.1 %	43,081	41.2 %
	9	100.0 %	166,719	78.3	19.3	9.1	28.2	1.5	104,617	2.1 %	43,081	41.2 %
10			166,147	67.4	9.1	22.0	30.8	1.8	95,480	10.5 %	34,786	36.4 %
	4	1.9 %	3,084	89.5	4.5	5.0	9.3	1.3	2,063	2.2 %	751	36.4 %
	10	98.1 %	163,063	67.0	9.2	22.3	31.2	1.8	93,417	10.7 %	34,035	36.4 %
*11			168,699	63.3	17.8	17.5	34.9	1.7	98,042	4.7 %	36,768	40.8 %
	11	100.0 %	168,699	63.3	17.8	17.5	34.9	1.7	98,042	4.7 %	36,768	40.8 %
12			164,418	66.2	16.7	15.9	32.3	1.5	96,106	5.8 %	40,896	42.6 %
	57	100.0 %	164,418	66.2	16.7	15.9	32.3	1.5	96,106	5.8 %	40,896	42.6 %
13			166,395	65.2	12.2	21.9	33.6	1.3	104,721	12.1 %	48,323	46.1 %
	13	75.1 %	125,013	67.0	13.5	18.7	31.7	1.3	78,525	8.2 %	37,496	47.8 %
	30	16.4 %	27,307	57.9	8.8	32.8	40.9	1.2	17,396	25.6 %	7,164	41.2 %
	85	8.5 %	14,075	62.9	7.6	29.0	36.0	1.1	8,800	20.5 %	3,663	41.6 %
14			162,621	56.4	12.6	24.4	36.5	7.1	69,224	12.5 %	27,360	39.5 %
	14	100.0 %	162,621	56.4	12.6	24.4	36.5	7.1	69,224	12.5 %	27,360	39.5 %
15			166,182	73.7	5.2	16.2	21.1	5.3	98,801	6.8 %	46,596	47.2 %
	3	12.7 %	21,184	63.9	6.5	23.1	29.2	4.9	9,567	9.3 %	3,771	39.4 %
	15	87.3 %	144,998	74.8	5.0	15.2	19.9	5.3	89,234	6.6 %	42,825	48.0 %
16			165,766	63.2	5.3	29.7	34.6	2.2	79,543	9.8 %	32,361	40.7 %
	3	23.3 %	38,556	65.7	2.3	30.2	32.2	2.2	18,708	10.4 %	7,563	40.4 %
	15	1.9 %	3,142	81.4	1.7	13.1	14.8	3.9	2,169	6.3 %	1,186	54.7 %
	16	74.8 %	124,068	62.0	6.3	30.0	35.8	2.1	58,666	9.8 %	23,612	40.2 %
17			165,843	54.6	9.1	35.2	43.7	1.7	93,991	19.4 %	41,399	44.0 %
	13	10.4 %	17,187	68.1	12.8	18.4	30.9	1.0	10,963	9.7 %	4,528	41.3 %
	17	89.6 %	148,656	53.1	8.6	37.1	45.1	1.8	83,028	20.7 %	36,871	44.4 %
*18			169,888	66.0	16.1	16.4	32.2	1.8	89,203	6.0 %	36,730	41.2 %
	18	100.0 %	169,888	66.0	16.1	16.4	32.2	1.8	89,203	6.0 %	36,730	41.2 %
*19			171,969	79.2	11.9	7.1	18.9	1.9	114,205	2.6 %	44,387	38.9 %
	19	100.0 %	171,969	79.2	11.9	7.1	18.9	1.9	114,205	2.6 %	44,387	38.9 %
20			163,485	72.9	4.3	21.3	25.2	1.9	100,595	8.9 %	49,954	49.7 %
	20	94.9 %	155,149	74.3	4.1	20.1	23.9	1.9	96,610	8.3 %	48,342	50.0 %
	52	5.1 %	8,321	47.8	7.9	43.6	50.5	1.7	3,977	22.6 %	1,609	40.5 %
	149	0.0 %	15	80.0	0.0	13.3	13.3	6.7	8	12.5 %	3	37.5 %
21			167,481	79.9	8.0	8.7	16.6	3.5	105,338	4.7 %	44,533	42.3 %
	21	88.9 %	148,855	81.8	7.1	8.4	15.3	2.8	92,599	4.6 %	38,003	41.0 %
	22	11.1 %	18,626	65.0	15.6	11.2	26.5	8.5	12,739	5.2 %	6,530	51.3 %
22			166,629	27.9	43.8	19.8	68.0	4.1	89,370	6.1 %	29,547	33.1 %
	21	14.0 %	23,325	46.9	17.8	28.3	45.5	7.6	12,155	11.6 %	4,121	33.9 %
	22	86.0 %	143,304	24.8	53.8	18.5	71.6	3.6	77,215	5.2 %	25,426	32.9 %
23			163,435	51.4	20.1	26.0	45.5	3.1	103,849	14.7 %	38,371	36.9 %
	23	100.0 %	163,435	51.4	20.1	26.0	45.5	3.1	103,847	14.7 %	38,370	36.9 %
	24	0.0 %	0	0.0	0.0	0.0	0.0	0.0	2	0.0 %	1	50.0 %
24			162,970	69.6	7.7	18.0	25.3	5.1	101,750	10.3 %	47,460	46.6 %
	23	0.2 %	285	74.0	3.5	18.6	21.4	4.6	166	15.7 %	70	42.2 %
	24	99.8 %	162,685	69.6	7.7	18.0	25.3	5.1	101,584	10.3 %	47,390	46.7 %
25			174,922	54.8	12.0	31.3	42.8	2.3	97,454	18.0 %	39,125	40.1 %
	25	99.2 %	173,476	54.8	12.1	31.4	42.9	2.3	96,578	18.0 %	38,719	40.1 %
	29	0.8 %	1,446	63.6	5.4	29.0	34.1	2.3	876	11.4 %	406	46.3 %
26			163,669	29.2	10.0	21.7	40.0	30.9	83,489	13.1 %	33,910	40.6 %
	26	61.4 %	100,513	35.0	14.0	16.8	30.3	34.7	56,323	10.5 %	23,941	42.5 %
	27	3.9 %	6,464	21.4	11.8	12.1	23.4	55.2	3,335	11.0 %	1,329	39.9 %

* = The district in the first plan is identical to the district in the second plan.
Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and the results for write-in candidates are summed and included as "write-in". Complete official results for all years are maintained by the office of the secretary of state.
SSVR-T = Total Spanish surname voter registration

Bob Mc
Data: 2010 Census
PLANH302 11/22/2011 1:15:03 PM
PLANH283 06/28/2011 5:04:29 PM

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

PLANH302	PLANH283		Total Population Total	%A	%B	%H	%BH	%O	Total Voter Registration Total	SSVR-T	Turnout Total	TO/VR
	28	34.6 %	56,692	19.7	28.6	31.4	59.1	21.3	23,831	19.4 %	8,640	36.3 %
27			163,609	21.5	43.6	23.6	66.2	12.3	90,855	11.9 %	40,605	44.7 %
	26	2.2 %	3,599	72.5	4.3	8.1	12.3	15.1	3,025	6.0 %	1,832	60.6 %
	27	93.9 %	153,628	21.0	45.2	22.1	66.4	12.7	85,895	11.6 %	38,155	44.4 %
	85	3.9 %	6,390	6.4	26.9	66.9	92.7	0.8	1,935	35.8 %	618	31.9 %
28			163,917	50.6	10.2	25.5	35.1	14.3	82,778	15.3 %	39,713	48.0 %
	26	22.9 %	37,614	55.7	10.5	19.6	29.8	14.5	22,009	12.2 %	10,846	49.3 %
	28	56.2 %	92,089	59.7	7.5	17.2	24.3	16.0	46,200	8.8 %	24,372	52.8 %
	85	20.9 %	34,214	20.5	17.1	54.2	70.2	9.3	14,569	40.7 %	4,495	30.9 %
29			174,946	58.4	13.5	26.2	39.3	10.3	94,233	15.4 %	40,110	42.6 %
	25	0.4 %	692	28.4	3.6	74.0	77.0	2.6	179	52.0 %	64	35.8 %
	29	99.6 %	174,254	58.5	13.6	26.0	39.2	10.3	94,054	15.4 %	40,046	42.6 %
30			163,877	51.3	12.6	27.6	39.7	8.9	94,441	16.6 %	43,540	46.1 %
	13	17.3 %	28,417	65.7	10.2	23.4	33.1	1.3	17,855	10.0 %	8,680	48.6 %
	26	01.2 %	18,365	66.0	7.1	9.8	16.6	17.4	11,894	7.2 %	6,908	58.1 %
	28	7.1 %	11,592	74.1	8.1	13.8	21.8	4.1	7,577	8.1 %	4,444	58.7 %
	85	64.4 %	105,503	42.4	14.7	33.4	47.5	10.1	57,115	21.7 %	23,508	41.2 %
31			162,909	3.8	0.4	95.6	95.8	0.4	65,808	89.9 %	12,207	18.5 %
	31	46.0 %	74,906	4.4	0.2	95.2	95.3	0.3	36,351	93.1 %	4,962	13.7 %
	42	2.5 %	4,060	5.4	0.6	93.2	93.7	0.9	1,963	82.0 %	614	31.3 %
	80	51.5 %	83,923	3.2	0.7	96.0	96.3	0.5	27,494	86.3 %	6,631	24.1 %
32			168,151	54.0	5.1	38.5	43.1	3.0	103,458	27.4 %	40,219	38.9 %
	30	78.1 %	131,332	51.6	5.5	40.9	45.8	2.6	80,158	30.1 %	30,915	38.6 %
	32	21.9 %	36,819	62.6	3.8	29.8	33.2	4.2	23,300	18.4 %	9,304	39.9 %
33			167,625	28.3	4.2	66.8	70.3	1.4	90,580	54.0 %	27,668	30.5 %
	32	28.6 %	48,203	32.7	5.6	60.5	65.2	2.1	25,815	43.2 %	8,515	33.0 %
	34	71.2 %	119,422	26.5	3.7	69.3	72.3	1.1	64,765	57.5 %	19,153	29.6 %
34			167,840	29.1	5.0	63.1	67.4	3.5	93,674	53.5 %	30,683	32.8 %
	32	48.9 %	82,052	37.8	5.1	53.0	57.4	4.8	43,777	41.3 %	14,932	34.1 %
	34	32.0 %	53,727	19.3	5.2	74.3	78.8	1.9	31,893	65.4 %	10,105	31.7 %
	43	19.1 %	32,061	23.3	4.3	70.2	73.7	2.9	18,004	61.9 %	5,646	31.4 %
35			168,627	10.7	0.6	88.4	88.7	0.6	61,103	73.7 %	17,593	28.8 %
	31	17.0 %	28,731	4.9	0.4	94.9	95.0	0.2	3,974	83.7 %	836	21.0 %
	36	17.5 %	29,475	7.2	0.1	92.6	92.6	0.2	10,309	81.3 %	4,308	41.8 %
	38	3.9 %	6,536	19.0	1.5	78.9	79.9	1.0	2,839	59.2 %	725	25.5 %
	39	17.1 %	28,813	3.1	0.5	96.5	96.7	0.2	10,579	87.6 %	3,621	34.2 %
	41	7.5 %	12,688	11.8	1.0	85.8	86.5	1.7	5,527	68.1 %	1,162	21.0 %
	43	37.0 %	62,382	17.5	0.8	81.2	81.6	0.9	27,875	66.7 %	6,941	24.9 %
36			168,963	6.1	0.6	92.7	92.9	1.0	68,779	82.6 %	13,673	19.9 %
	36	50.8 %	85,769	5.0	0.5	94.3	94.5	0.5	37,341	86.5 %	7,174	19.2 %
	40	31.4 %	53,077	2.2	0.6	97.3	97.5	0.4	19,551	89.2 %	3,679	18.8 %
	41	17.8 %	30,117	16.3	1.1	79.7	80.4	3.4	11,887	59.3 %	2,820	23.7 %
37			169,088	9.4	0.6	89.8	90.0	0.6	74,171	77.2 %	17,166	23.1 %
	37	88.9 %	150,275	9.5	0.6	89.6	89.9	0.6	67,063	77.4 %	15,031	22.4 %
	38	11.1 %	18,813	8.8	0.7	90.6	90.8	0.4	7,108	75.6 %	2,135	30.0 %
38			168,214	9.1	0.7	89.3	89.6	1.2	69,296	77.0 %	16,531	23.9 %
	37	11.3 %	19,089	10.1	0.8	86.6	87.1	2.8	8,324	74.0 %	2,209	26.5 %
	38	84.7 %	142,444	8.5	0.7	90.2	90.5	1.0	58,228	78.2 %	13,567	23.3 %
	43	4.0 %	6,681	20.5	0.7	78.2	78.7	0.9	2,744	61.3 %	755	27.5 %
39			168,659	8.3	0.5	91.1	91.2	0.5	71,983	81.4 %	20,131	28.0 %
	31	4.3 %	7,196	4.7	0.1	95.1	95.2	0.2	1,763	81.3 %	306	17.4 %
	39	73.4 %	123,770	10.2	0.6	89.0	89.2	0.6	56,299	79.5 %	16,893	30.0 %
	40	22.3 %	37,693	2.7	0.4	97.0	97.1	0.2	13,921	89.4 %	2,932	21.1 %
40			168,662	4.7	1.0	93.8	94.5	0.8	55,174	85.4 %	12,339	22.4 %
	31	34.2 %	57,723	3.8	1.2	94.9	96.0	0.2	11,836	87.8 %	1,972	16.7 %
	39	13.5 %	22,798	2.1	0.5	97.7	97.8	0.1	10,186	91.6 %	3,330	32.7 %
	40	47.5 %	80,163	5.6	1.0	92.4	93.0	1.4	30,234	83.5 %	6,493	21.5 %
	41	4.7 %	7,978	9.9	0.6	88.9	89.2	0.9	2,918	74.3 %	544	18.6 %
41			168,776	13.2	1.0	83.3	83.9	2.8	70,167	67.8 %	18,072	25.8 %
	36	33.6 %	56,761	5.2	0.5	93.4	93.6	1.2	17,318	84.5 %	2,912	16.8 %
	40	1.5 %	2,560	21.9	3.1	69.4	71.6	6.4	1,368	51.3 %	57	4.2 %
	41	64.9 %	109,455	17.2	1.2	78.4	79.2	3.6	51,481	62.6 %	15,103	29.3 %
42			162,321	3.4	0.5	95.7	95.8	0.8	78,088	85.6 %	22,289	28.5 %
	42	96.6 %	156,756	3.3	0.5	95.7	95.9	0.8	75,339	85.9 %	21,683	28.8 %
	80	3.4 %	5,567	5.0	0.6	93.2	93.4	1.6	2,749	79.4 %	606	22.0 %
43			171,411	29.2	2.0	68.0	69.6	1.2	111,702	62.6 %	31,898	28.6 %
	30	4.3 %	7,383	45.2	7.2	47.2	53.6	1.2	5,341	61.1 %	1,764	33.0 %
	35	51.4 %	88,117	40.1	2.3	56.4	58.3	1.6	58,694	50.5 %	18,650	31.8 %
	43	41.2 %	70,611	15.5	1.3	82.8	83.6	0.8	43,812	78.8 %	10,415	23.8 %
	80	3.1 %	5,300	6.3	0.6	92.6	93.0	0.7	3,855	90.6 %	1,069	27.7 %
*44			174,451	55.8	6.1	36.3	41.8	2.5	101,604	24.9 %	41,718	41.1 %
	44	100.0 %	174,451	55.8	6.1	36.3	41.8	2.5	101,604	24.9 %	41,718	41.1 %

* = The district in the first plan is identical to the district in the second plan.
Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and the results for write-in candidates are summed and included as "write-in". Complete official results for all years are maintained by the office of the secretary of state.
SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

			Total Population						Total Voter Registration		Turnout	
PLANH302	PLANH283		Total	%A	%B	%H	%BH	%O	Total	SSVR-T	Total	TO/VR
*45			167,604	59.9	4.0	34.2	37.6	2.5	104,849	20.7 %	43,594	41.6 %
	45	100.0 %	167,604	59.9	4.0	34.2	37.6	2.5	104,849	20.7 %	43,594	41.6 %
46			170,822	27.4	22.8	44.5	66.0	6.5	79,752	17.6 %	26,379	33.1 %
	46	88.3 %	150,903	26.9	23.1	46.3	68.2	4.9	70,274	17.9 %	23,250	33.1 %
	50	11.7 %	19,919	31.3	20.3	30.8	50.1	18.6	9,478	15.9 %	3,129	33.0 %
47			171,116	74.3	2.5	15.3	17.6	8.1	113,986	8.0 %	53,839	47.2 %
	47	95.6 %	163,640	75.0	2.3	14.7	16.7	8.2	109,425	7.7 %	52,935	48.4 %
	48	4.4 %	7,467	58.6	7.9	28.5	35.7	5.7	4,561	15.5 %	904	19.8 %
48			170,732	66.6	3.8	23.0	26.4	7.1	120,084	13.0 %	56,427	47.0 %
	47	5.1 %	8,778	82.2	1.1	9.0	10.0	7.8	6,530	4.4 %	3,650	55.9 %
	48	91.7 %	156,577	66.8	3.9	22.6	26.1	7.1	110,694	13.0 %	52,016	47.0 %
	51	3.1 %	5,377	33.3	6.7	56.9	63.0	3.7	2,860	34.7 %	761	26.6 %
49			170,321	59.2	5.2	27.8	32.5	8.3	114,316	11.4 %	43,013	37.6 %
	46	6.3 %	10,796	19.5	8.6	66.7	74.2	6.3	3,347	21.9 %	1,003	30.0 %
	48	2.3 %	3,947	52.3	5.3	38.8	43.8	4.0	2,440	19.8 %	1,028	41.8 %
	49	91.3 %	155,578	62.2	4.9	24.8	29.3	8.6	108,509	10.9 %	40,982	37.8 %
50			170,943	50.9	11.5	27.4	38.2	10.9	98,881	12.7 %	38,424	38.9 %
	46	2.8 %	4,711	39.0	21.4	32.2	52.6	8.4	2,667	20.3 %	962	36.1 %
	47	1.7 %	2,887	72.2	1.0	5.9	7.0	20.8	2,410	3.5 %	1,283	53.2 %
	48	2.9 %	5,017	80.5	2.2	9.3	11.4	8.2	3,257	3.8 %	1,828	56.1 %
	49	6.9 %	11,731	52.6	10.5	25.1	34.8	12.6	7,228	12.7 %	2,450	33.9 %
	50	85.8 %	146,597	49.7	11.8	28.5	39.5	10.8	83,319	13.0 %	31,901	38.3 %
51			170,332	24.8	10.5	62.9	72.2	3.0	77,329	36.3 %	20,140	26.0 %
	46	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	51	100.0 %	170,332	24.8	10.5	62.9	72.2	3.0	77,329	36.3 %	20,140	26.0 %
52			163,674	55.3	10.6	28.9	38.7	6.0	83,574	15.3 %	32,815	39.3 %
	20	2.0 %	3,297	67.8	2.3	28.5	30.5	1.7	1,745	11.2 %	745	42.7 %
	52	96.3 %	157,673	54.6	10.9	29.2	39.2	6.1	79,886	15.6 %	31,104	38.9 %
	149	1.7 %	2,704	77.5	3.0	12.8	15.8	6.7	1,943	6.7 %	966	49.7 %
*53			162,897	65.9	1.7	31.1	32.5	1.6	106,904	19.9 %	50,179	46.9 %
	53	100.0 %	162,897	65.9	1.7	31.1	32.5	1.6	106,904	19.9 %	50,179	46.9 %
54			165,145	38.7	34.5	21.9	53.9	7.3	72,813	13.3 %	15,880	21.8 %
	54	72.8 %	120,180	37.8	35.9	21.4	54.7	7.6	54,838	12.9 %	12,687	23.1 %
	55	27.2 %	44,965	41.4	30.7	23.5	51.9	6.7	17,975	14.5 %	3,193	17.8 %
55			164,767	65.6	11.0	20.8	31.1	3.3	94,564	10.7 %	39,717	37.8 %
	54	28.9 %	47,556	72.4	7.2	17.1	23.6	4.1	29,815	8.5 %	11,948	40.1 %
	55	71.1 %	117,211	62.9	12.6	22.3	34.2	2.9	64,749	11.8 %	23,769	36.7 %
56			162,301	60.1	13.1	24.6	37.2	2.7	89,585	11.9 %	40,212	44.9 %
	12	9.1 %	14,771	19.3	27.9	53.0	79.8	0.9	6,375	29.3 %	1,621	25.4 %
	56	90.9 %	147,530	64.2	11.6	21.8	32.9	2.9	83,210	10.5 %	38,591	46.4 %
57			162,707	60.2	18.7	19.9	38.0	1.8	91,853	8.8 %	39,549	43.1 %
	12	89.6 %	145,802	58.8	19.6	20.4	39.4	1.8	82,234	9.0 %	35,440	43.1 %
	14	0.3 %	566	52.3	36.2	12.0	47.3	0.4	423	6.6 %	205	48.5 %
	56	10.0 %	16,339	72.8	10.3	15.7	25.4	1.8	9,198	7.3 %	3,904	42.4 %
*58			169,146	77.0	3.0	17.9	20.7	2.3	93,150	7.9 %	36,846	39.6 %
	58	100.0 %	169,146	77.0	3.0	17.9	20.7	2.3	93,150	7.9 %	36,846	39.6 %
*59			163,609	69.8	9.2	18.6	27.1	3.2	91,856	9.3 %	32,921	36.2 %
	59	100.0 %	163,609	69.8	9.2	18.6	27.1	3.2	91,856	9.3 %	32,921	36.2 %
60			169,500	76.4	3.8	18.5	22.1	1.5	101,446	9.8 %	41,868	41.3 %
	60	70.9 %	120,247	79.1	2.9	16.6	19.2	1.6	73,314	8.5 %	29,983	40.9 %
	68	10.9 %	18,550	80.6	1.6	16.4	17.9	1.5	11,219	5.6 %	5,374	47.9 %
	71	11.9 %	20,202	62.1	12.1	24.8	36.6	1.3	10,037	15.4 %	3,858	38.4 %
	72	6.2 %	10,501	65.1	2.2	32.0	33.8	1.1	6,876	22.9 %	2,653	38.6 %
61			168,109	85.8	1.6	10.5	12.0	2.2	107,666	4.3 %	46,541	43.2 %
	60	30.4 %	51,182	87.1	0.7	10.2	10.9	2.0	33,835	4.4 %	16,055	47.5 %
	61	69.6 %	116,927	85.3	2.0	10.6	12.5	2.2	73,831	4.3 %	30,486	41.3 %
*62			160,023	79.3	6.9	10.7	17.4	3.3	95,524	3.3 %	35,820	37.5 %
	62	100.0 %	160,023	79.3	6.9	10.7	17.4	3.3	95,524	3.3 %	35,820	37.5 %
63			186,139	71.9	5.4	15.4	20.5	7.6	99,299	6.2 %	39,462	39.7 %
	63	95.4 %	158,448	71.3	5.5	15.6	20.8	7.9	94,357	6.2 %	36,748	38.9 %
	64	4.6 %	7,691	84.5	2.5	11.2	13.4	2.1	4,942	4.7 %	2,714	54.9 %
64			165,891	66.5	9.3	19.2	28.0	5.5	89,928	7.6 %	31,543	35.1 %
	63	5.4 %	8,889	83.7	4.2	6.1	10.2	6.1	6,104	3.7 %	2,664	43.6 %
	64	94.6 %	156,997	65.5	9.6	19.9	29.0	5.4	83,824	7.8 %	28,879	34.5 %
	106	0.0 %	5	0.0	0.0	100.0	100.0	0.0	0	0.0%	0	0.0%
65			165,742	51.9	13.6	21.4	34.5	13.6	88,340	8.4 %	29,362	33.2 %
	65	100.0 %	165,742	51.9	13.6	21.4	34.5	13.6	88,340	8.4 %	29,362	33.2 %
	106	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
66			172,696	60.0	9.5	10.0	19.1	20.8	97,962	4.2 %	35,887	36.6 %
	33	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	66	97.2 %	167,790	59.7	9.6	10.1	19.3	21.0	94,339	4.2 %	34,478	36.5 %
	67	2.8 %	4,906	71.5	5.5	7.3	12.6	15.9	3,623	3.7 %	1,409	38.9 %

* = The district in the first plan is identical to the district in the second plan.
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SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

PLANH302	PLANH283		Total Population Total	%A	%B	%H	%BH	%O	Total Voter Registration Total	SSVR-T	Turnout Total	TO/VR
67			172,517	58.9	8.2	17.0	24.9	16.3	95,823	6.0 %	35,300	36.8 %
	66	2.5 %	4,339	63.9	5.2	6.6	11.7	24.4	2,726	5.1 %	1,035	38.0 %
	67	92.2 %	159,112	59.5	8.2	16.5	24.3	16.2	88,692	5.7 %	32,596	36.8 %
	89	5.3 %	9,066	45.2	11.2	30.9	41.5	13.3	4,405	11.4 %	1,669	37.9 %
68			169,389	81.1	2.2	14.9	16.9	2.0	106,988	6.0 %	43,120	40.3 %
	61	34.9 %	59,127	79.7	1.3	17.1	18.3	2.0	35,440	6.3 %	12,756	36.0 %
	68	48.2 %	81,675	80.3	2.9	15.0	17.7	2.0	51,028	5.8 %	21,713	42.6 %
	69	16.9 %	28,587	86.4	1.9	10.1	11.8	1.7	20,520	5.9 %	8,651	42.2 %
69			168,035	67.6	10.7	18.7	28.9	3.5	101,362	9.8 %	33,469	33.0 %
	68	21.7 %	36,535	64.7	7.5	26.4	33.4	1.9	22,063	13.4 %	7,972	36.1 %
	69	78.3 %	131,500	68.4	11.6	16.6	27.6	4.0	79,299	8.8 %	25,497	32.2 %
70			171,950	65.2	10.9	16.9	27.3	7.4	88,944	7.2 %	32,444	36.5 %
	33	18.1 %	31,182	63.5	10.5	10.8	20.9	15.6	15,863	6.3 %	5,542	34.9 %
	70	81.8 %	140,737	65.6	11.0	18.2	28.8	5.6	73,065	7.3 %	26,902	36.8 %
	89	0.0 %	31	77.4	0.0	22.6	22.6	0.0	16	6.3 %	0	0.0 %
71			167,617	65.6	7.9	24.7	31.8	2.6	96,689	15.3 %	35,158	36.4 %
	68	2.4 %	3,974	70.4	3.9	25.1	28.5	1.1	2,828	19.8 %	1,336	47.2 %
	71	87.5 %	146,722	66.3	8.3	23.3	30.8	2.9	84,319	14.2 %	30,360	36.0 %
	83	10.1 %	16,921	57.8	5.4	36.3	41.2	1.0	9,542	24.1 %	3,462	36.3 %
72			169,381	56.5	5.4	36.6	41.4	2.1	93,378	24.0 %	34,237	36.7 %
	72	94.4 %	159,978	56.9	5.0	36.6	41.0	2.2	88,794	23.8 %	32,652	36.8 %
	83	5.6 %	9,403	50.5	11.6	37.0	48.3	1.2	4,584	27.2 %	1,585	34.6 %
*73			166,719	73.5	1.5	23.3	24.5	1.9	115,794	13.5 %	56,945	49.2 %
	73	100.0 %	166,719	73.5	1.5	23.3	24.5	1.9	115,794	13.5 %	56,945	49.2 %
*74			162,357	17.2	1.8	80.1	81.5	1.3	89,121	67.6 %	27,967	31.4 %
	74	100.0 %	162,357	17.2	1.8	80.1	81.5	1.3	89,121	67.6 %	27,967	31.4 %
75			160,080	3.1	1.5	92.9	94.0	1.0	59,401	81.0 %	10,517	17.7 %
	75	99.8 %	159,691	3.1	1.5	92.9	94.0	1.0	59,298	81.0 %	10,500	17.7 %
	79	0.2 %	389	8.0	3.1	89.5	92.0	0.0	103	78.6 %	17	16.5 %
76			160,095	8.9	2.6	88.2	90.1	1.1	85,666	80.1 %	17,212	20.1 %
	76	96.5 %	154,421	8.5	2.5	88.6	90.4	1.0	82,850	80.8 %	16,359	19.7 %
	79	3.5 %	5,674	18.2	5.0	76.5	80.3	1.6	2,816	58.9 %	853	30.3 %
77			160,208	17.9	4.3	76.3	79.7	2.5	83,064	58.5 %	23,048	27.7 %
	76	3.3 %	5,339	8.2	1.4	90.4	91.2	0.6	3,127	77.3 %	814	26.0 %
	77	65.0 %	104,098	10.6	3.7	83.2	87.9	1.5	49,123	78.9 %	10,414	21.2 %
	78	31.7 %	50,771	33.8	5.8	56.6	61.5	4.7	30,814	36.9 %	11,820	38.4 %
78			160,181	20.3	5.1	73.0	77.1	2.6	78,511	54.2 %	21,570	27.5 %
	77	31.4 %	50,363	16.7	5.6	76.7	80.8	2.5	25,023	58.0 %	5,690	22.7 %
	78	68.6 %	109,818	22.0	5.0	71.3	75.4	2.7	53,488	52.4 %	15,880	29.7 %
79			160,083	13.6	4.9	80.6	84.6	1.8	73,071	68.7 %	16,323	22.3 %
	75	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	77	3.4 %	5,488	45.6	25.4	23.2	46.4	8.0	867	18.9 %	34	3.9 %
	79	96.6 %	154,595	12.5	4.2	82.6	85.9	1.6	72,204	69.3 %	16,289	22.6 %
80			164,484	28.5	3.5	67.2	70.3	1.2	93,158	62.2 %	31,155	33.4 %
	17	9.0 %	14,824	40.2	9.6	49.8	59.0	0.8	7,865	45.0 %	3,021	38.4 %
	35	51.3 %	84,365	33.9	3.9	61.5	64.9	1.2	43,387	55.6 %	15,399	35.5 %
	80	39.7 %	65,295	18.9	1.7	78.5	79.8	1.4	41,906	72.3 %	12,735	30.4 %
*81			169,684	42.0	4.7	52.1	56.2	1.8	84,877	35.3 %	27,506	32.4 %
	81	100.0 %	169,684	42.0	4.7	52.1	56.2	1.8	84,877	35.3 %	27,506	32.4 %
*82			163,234	51.6	6.9	39.9	46.3	2.2	87,247	25.1 %	33,691	38.6 %
	82	100.0 %	163,234	51.6	6.9	39.9	46.3	2.2	87,247	25.1 %	33,691	38.6 %
83			167,834	61.3	4.1	33.0	36.7	2.0	94,700	23.9 %	36,822	38.8 %
	68	11.8 %	19,774	45.7	4.8	49.3	53.6	0.7	11,878	36.6 %	4,313	36.3 %
	83	87.9 %	147,445	63.4	4.0	30.9	34.5	2.1	82,670	22.1 %	32,383	39.2 %
	84	0.4 %	615	68.0	2.0	16.1	18.0	14.0	232	8.2 %	126	54.3 %
84			167,504	51.2	10.8	35.1	45.1	3.6	86,359	24.8 %	27,973	32.4 %
	83	0.1 %	149	79.9	0.0	14.8	14.8	5.4	80	11.3 %	43	53.8 %
	84	99.9 %	167,355	51.2	10.8	35.1	45.1	3.6	86,279	24.8 %	27,930	32.4 %
85			167,878	51.8	4.0	43.3	46.9	1.3	96,113	27.7 %	33,974	35.3 %
	87	3.7 %	6,182	88.5	0.9	8.5	9.4	2.1	4,373	5.0 %	1,915	43.8 %
	88	96.3 %	160,896	50.4	4.1	44.6	48.3	1.3	91,738	28.8 %	32,059	34.9 %
*86			165,183	68.9	2.8	26.3	28.8	2.3	97,759	14.3 %	38,025	38.9 %
	96	100.0 %	165,183	68.9	2.8	26.3	28.8	2.3	97,759	14.3 %	38,025	38.9 %
87			168,161	51.1	8.8	35.6	43.7	5.2	78,470	19.2 %	25,512	32.5 %
	87	100.0 %	168,161	51.1	8.8	35.6	43.7	5.2	78,470	19.2 %	25,512	32.5 %
88			164,842	67.4	8.9	17.0	25.5	7.1	87,024	7.5 %	30,940	35.6 %
	64	1.8 %	2,900	71.3	2.4	24.5	26.8	2.0	1,594	4.6 %	616	38.6 %
	65	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	106	98.2 %	161,942	67.3	9.0	16.8	25.5	7.2	85,430	7.5 %	30,324	35.5 %
89			172,541	63.7	10.0	14.3	24.0	12.4	93,134	6.5 %	35,092	37.7 %
	67	4.7 %	8,123	47.7	13.9	7.8	21.5	30.8	4,098	4.6 %	1,541	37.6 %
	70	5.1 %	8,766	69.3	5.8	22.6	28.0	2.8	4,157	8.0 %	1,380	33.2 %

* = The district in the first plan is identical to the district in the second plan.
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SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

PLANH302	PLANH283		Total Population Total	%A	%B	%H	%BH	%O	Total Voter Registration Total	SSVR-T	Turnout Total	TO/VR
	89	95.2 %	155,652	64.2	10.1	14.2	23.9	11.9	84,879	6.5 %	32,171	37.9 %
90			164,567	18.7	9.6	70.1	79.1	2.3	55,008	42.4 %	13,946	25.4 %
	90	81.6 %	134,245	13.3	7.3	78.3	84.9	1.8	40,377	53.1 %	9,059	22.4 %
	93	5.9 %	9,768	36.8	2.0	54.1	55.7	7.5	3,718	22.5 %	1,103	29.7 %
	95	5.9 %	9,712	55.5	25.0	17.6	42.1	2.4	4,533	8.8 %	1,433	31.6 %
	97	1.8 %	3,022	63.2	4.1	28.3	31.9	4.9	1,865	13.2 %	795	42.6 %
	99	4.8 %	7,820	26.2	42.1	30.5	71.9	1.9	4,515	9.2 %	1,556	34.5 %
91			165,088	61.3	8.8	23.6	31.9	6.8	90,223	9.5 %	32,999	36.6 %
	90	0.9 %	1,416	32.0	3.2	62.1	65.1	2.9	451	26.2 %	89	19.7 %
	91	72.8 %	120,204	67.0	5.4	21.5	26.6	6.4	67,362	9.5 %	24,501	36.4 %
	92	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	93	25.7 %	42,467	46.1	18.2	28.5	45.8	8.1	21,760	9.5 %	8,084	37.2 %
	95	0.6 %	1,001	58.3	19.2	12.8	31.6	10.1	650	6.8 %	325	50.0 %
92			164,800	61.8	11.9	17.5	28.9	9.3	93,499	8.0 %	35,080	37.5 %
	91	4.6 %	7,617	58.1	8.5	28.9	36.8	5.0	3,341	11.1 %	958	28.7 %
	92	92.4 %	152,231	61.2	12.4	17.3	29.2	9.6	86,834	8.1 %	31,976	37.2 %
	93	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	98	3.0 %	4,952	85.4	2.0	5.2	7.2	7.5	4,124	3.3 %	2,146	52.0 %
93			164,126	27.5	30.7	32.6	62.4	10.1	71,993	14.4 %	22,570	31.4 %
	92	2.5 %	4,123	34.2	37.8	19.8	56.6	9.2	2,000	9.0 %	522	26.1 %
	93	9.9 %	16,171	41.9	25.5	28.0	52.6	5.5	8,312	10.6 %	2,494	30.0 %
	94	8.1 %	13,254	35.4	35.8	19.9	54.5	10.1	6,267	11.3 %	1,994	31.8 %
	96	3.4 %	5,546	28.3	38.3	26.1	63.5	8.2	2,637	12.8 %	913	34.6 %
	101	76.2 %	125,030	24.6	30.2	35.3	64.6	10.8	52,777	15.7 %	16,647	31.5 %
94			164,463	52.3	14.4	25.4	39.1	8.6	89,372	9.2 %	34,472	38.6 %
	93	2.4 %	3,879	29.1	5.8	64.3	68.9	2.0	1,351	24.9 %	351	26.0 %
	94	75.3 %	123,917	60.5	12.8	19.2	31.5	8.0	73,404	7.5 %	29,844	40.7 %
	95	1.0 %	1,581	45.3	8.7	44.4	52.1	2.6	566	12.0 %	140	24.7 %
	101	21.3 %	35,086	26.1	21.1	42.0	62.1	11.8	14,051	16.4 %	4,137	29.4 %
95			164,467	17.8	48.1	32.1	79.2	3.0	79,696	9.5 %	26,927	33.8 %
	90	9.7 %	15,886	5.4	33.8	61.9	93.9	0.7	5,677	19.2 %	1,449	25.5 %
	93	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	95	81.9 %	134,689	18.9	50.2	28.9	78.1	3.1	67,797	8.0 %	23,382	34.5 %
	96	8.4 %	13,892	22.1	45.4	28.9	73.0	4.9	6,222	17.3 %	2,096	33.7 %
96			163,924	64.4	15.3	15.4	30.3	5.3	92,266	7.7 %	36,886	40.0 %
	94	18.4 %	30,203	69.4	11.1	13.2	23.9	6.6	19,414	7.0 %	8,241	42.4 %
	96	78.8 %	129,173	64.0	15.8	15.9	31.3	4.7	70,216	8.2 %	27,551	39.2 %
	101	2.8 %	4,548	42.9	28.6	16.4	44.0	13.0	2,636	0.8 %	1,094	41.5 %
97			164,518	59.7	16.3	19.6	35.3	5.0	96,229	9.1 %	41,340	43.0 %
	90	1.8 %	2,913	23.5	3.6	72.1	75.2	1.2	1,050	44.4 %	355	33.8 %
	95	8.9 %	14,651	31.1	29.9	35.3	64.4	4.6	7,412	16.3 %	2,813	38.0 %
	96	9.9 %	16,319	49.5	25.7	16.1	41.2	9.4	9,624	9.9 %	4,171	43.3 %
	97	79.4 %	130,633	65.0	13.9	17.1	30.4	4.6	78,143	7.9 %	34,001	43.5 %
98			164,082	78.4	3.9	11.2	14.9	6.7	103,441	5.1 %	45,012	43.5 %
	91	0.0 %	12	100.0	0.0	0.0	0.0	0.0	11	0.0 %	3	27.3 %
	92	3.6 %	5,970	84.9	2.9	6.5	9.3	5.8	4,522	4.8 %	2,182	48.3 %
	98	96.4 %	158,100	78.2	3.9	11.4	15.1	6.7	98,908	5.1 %	42,827	43.3 %
99			164,791	63.8	7.5	25.3	32.3	3.9	84,383	11.1 %	31,273	37.1 %
	90	2.2 %	3,628	38.7	1.7	58.0	59.5	1.8	1,346	26.6 %	290	21.5 %
	97	21.4 %	35,244	56.8	15.1	25.4	39.9	3.3	17,040	9.3 %	6,500	38.1 %
	99	76.4 %	125,919	66.5	5.5	24.3	29.4	4.1	65,997	11.3 %	24,483	37.1 %
100			168,904	9.7	37.9	52.1	89.3	1.0	67,762	20.3 %	17,741	26.2 %
	100	40.4 %	68,180	10.0	57.1	32.5	88.8	1.2	32,357	10.2 %	8,448	26.1 %
	103	3.6 %	6,040	29.9	18.2	49.5	67.1	3.0	2,707	14.7 %	902	33.3 %
	104	0.7 %	1,153	22.8	42.2	33.0	73.7	3.5	596	18.3 %	188	31.5 %
	108	2.3 %	3,921	14.7	3.2	80.4	83.0	2.3	1,487	59.0 %	319	21.5 %
	110	53.1 %	89,610	7.7	26.2	66.2	91.7	0.7	30,615	29.7 %	7,884	25.8 %
101			164,288	64.1	7.7	20.8	28.1	7.8	80,837	11.8 %	27,412	33.9 %
	90	0.8 %	1,340	20.3	3.8	72.8	76.0	3.7	408	41.2 %	92	22.5 %
	91	21.3 %	35,085	62.4	6.7	20.0	26.3	11.3	19,145	11.7 %	6,329	33.1 %
	93	54.7 %	89,876	62.5	9.6	20.2	29.3	8.3	40,768	11.4 %	13,690	33.6 %
	98	0.6 %	1,029	84.4	1.8	10.3	12.1	3.6	734	6.0 %	341	46.5 %
	99	22.5 %	36,958	70.7	4.5	21.6	25.7	3.6	19,782	12.5 %	6,960	35.2 %
102			169,171	48.9	10.8	29.4	39.7	11.4	89,637	7.5 %	38,950	43.5 %
	102	71.5 %	120,985	50.7	10.7	29.1	39.3	10.0	65,033	6.9 %	29,098	44.7 %
	112	28.5 %	48,186	44.4	11.1	30.2	40.8	14.8	24,604	9.2 %	9,852	40.0 %
103			169,261	16.6	6.6	74.5	80.4	3.1	52,392	37.9 %	15,329	29.3 %
	100	1.1 %	1,936	0.7	47.8	52.7	99.0	0.4	1,078	9.6 %	295	27.4 %
	103	72.0 %	121,909	13.2	5.9	78.7	83.9	2.9	33,727	43.0 %	9,325	27.6 %
	104	6.9 %	11,757	9.5	9.1	81.5	89.5	1.0	4,057	60.0 %	1,027	25.3 %
	105	10.5 %	17,801	28.4	7.2	61.4	67.8	3.8	6,341	19.6 %	2,183	34.4 %
	114	1.9 %	3,181	53.3	3.7	40.3	43.9	2.9	2,122	19.9 %	839	39.5 %

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SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

			Total Population						Total Voter Registration		Turnout	
PLANH302	PLANH283		Total	%A	%B	%H	%BH	%O	Total	SSVR-T	Total	TO/VR
	115	7.5 %	12,677	32.5	4.9	57.7	61.9	5.6	5,067	22.5 %	1,669	32.8 %
104			169,214	11.6	10.2	77.1	86.6	1.8	58,754	49.5 %	15,216	25.9 %
	100	2.3 %	3,971	6.6	41.8	51.7	92.4	1.0	2,169	20.8 %	731	33.7 %
	103	15.8 %	26,730	14.5	6.7	78.2	84.2	1.3	8,784	48.7 %	2,722	31.0 %
	104	71.0 %	120,107	8.2	10.2	80.9	90.4	1.4	40,064	55.8 %	9,545	23.8 %
	105	10.9 %	18,406	30.6	8.1	56.5	64.0	5.4	7,737	25.8 %	2,218	28.7 %
105			169,325	31.9	16.9	44.7	59.9	8.2	70,005	18.4 %	23,008	32.9 %
	103	2.3 %	3,958	13.6	3.7	82.9	85.2	1.1	992	46.9 %	344	34.7 %
	104	19.4 %	32,838	21.8	20.4	54.0	73.3	4.9	11,278	28.4 %	3,024	26.8 %
	105	72.1 %	122,146	36.1	13.4	42.5	55.1	8.8	53,595	16.3 %	18,538	34.6 %
	115	6.1 %	10,383	21.5	37.4	27.4	63.6	14.9	4,140	12.1 %	1,082	26.1 %
106			163,027	66.6	5.7	18.6	23.9	9.6	93,915	10.4 %	36,506	38.9 %
	20	0.8 %	1,370	75.3	0.6	22.1	22.7	2.0	836	10.3 %	345	41.3 %
	149	99.2 %	161,657	66.5	5.8	18.6	23.9	9.6	93,079	10.4 %	36,161	38.8 %
107			169,477	23.0	30.8	42.3	72.3	4.7	69,467	13.7 %	22,600	32.5 %
	100	39.7 %	67,361	22.5	28.6	47.2	75.0	2.5	27,936	17.8 %	9,267	33.2 %
	102	13.5 %	22,893	20.9	37.0	28.0	64.3	14.7	9,315	6.0 %	3,046	32.7 %
	107	22.4 %	37,989	28.5	16.2	51.7	67.2	4.3	14,652	18.9 %	4,634	31.6 %
	112	6.7 %	11,288	8.9	53.8	35.2	88.0	3.1	3,643	5.9 %	703	19.3 %
	114	17.7 %	30,046	24.2	40.8	32.7	72.7	3.1	13,919	7.2 %	4,950	35.6 %
108			169,385	64.5	8.3	22.3	30.2	5.3	102,989	8.8 %	41,754	40.5 %
	100	2.4 %	4,057	68.3	11.4	17.2	28.5	3.2	2,700	8.1 %	1,081	40.0 %
	103	7.7 %	13,083	43.3	19.1	32.0	50.6	6.1	8,292	11.4 %	3,158	38.1 %
	107	2.4 %	4,052	90.4	0.8	6.0	6.7	3.0	3,114	3.5 %	1,698	54.5 %
	108	85.4 %	144,700	65.6	7.4	22.0	29.0	5.4	86,662	8.8 %	34,839	40.2 %
	114	2.1 %	3,493	63.9	10.0	22.9	32.6	3.5	2,221	9.4 %	978	44.0 %
109			169,212	22.3	55.2	20.4	74.7	3.0	92,011	8.8 %	37,999	41.3 %
	104	3.4 %	5,765	31.8	31.0	26.6	56.4	11.8	3,192	15.2 %	1,165	36.5 %
	105	2.6 %	4,357	42.7	24.4	19.2	43.2	14.1	2,667	11.7 %	1,217	45.6 %
	109	76.6 %	129,584	18.7	61.2	19.5	79.7	1.6	71,762	7.9 %	29,899	41.5 %
	111	13.5 %	22,805	26.6	44.1	23.3	66.6	6.8	12,065	11.9 %	5,096	42.2 %
	113	4.0 %	6,701	55.1	18.7	23.9	42.0	2.9	2,325	9.3 %	722	31.1 %
110			169,550	19.1	44.5	35.8	79.5	1.4	86,079	10.1 %	27,059	31.4 %
	100	2.5 %	4,182	1.7	56.0	42.7	98.2	0.1	2,708	9.9 %	915	33.8 %
	107	5.3 %	8,924	50.3	21.3	26.2	47.0	2.7	4,741	10.9 %	1,601	33.8 %
	109	20.2 %	34,165	12.0	50.4	37.9	87.3	0.7	18,410	8.7 %	6,496	35.3 %
	110	42.7 %	72,475	9.3	58.8	31.8	89.9	0.8	40,799	8.0 %	11,788	28.9 %
	113	29.4 %	49,804	33.9	22.8	41.3	63.4	2.7	19,421	15.5 %	6,259	32.2 %
111			168,783	18.3	48.5	31.2	78.9	2.7	95,359	11.6 %	37,016	38.6 %
	104	0.7 %	1,164	28.4	16.9	49.1	65.5	6.1	527	26.9 %	173	32.8 %
	105	7.7 %	13,018	35.4	15.8	42.6	57.8	6.8	7,221	24.0 %	2,693	37.3 %
	109	6.2 %	10,427	23.2	53.3	21.3	73.5	3.2	6,715	10.0 %	2,892	43.1 %
	111	85.4 %	144,174	16.4	51.4	30.8	81.4	2.3	78,896	10.6 %	31,258	39.6 %
112			169,016	46.2	13.8	29.7	43.0	10.8	87,114	11.9 %	32,011	36.7 %
	107	0.1 %	252	23.0	3.6	71.0	74.2	2.8	87	41.4 %	37	42.5 %
	112	63.6 %	107,573	45.2	13.5	30.2	43.1	11.6	53,946	11.9 %	19,751	36.6 %
	113	36.2 %	61,191	47.9	14.5	28.6	42.6	9.5	33,081	11.7 %	12,223	36.9 %
113			168,858	43.7	20.2	30.4	50.0	6.2	83,762	12.3 %	30,019	35.8 %
	100	2.2 %	3,768	34.4	19.8	43.2	62.4	3.2	1,437	16.8 %	438	30.5 %
	107	62.7 %	105,910	44.3	19.1	32.7	51.1	4.6	51,946	13.1 %	18,081	34.8 %
	110	3.2 %	5,462	29.3	21.4	47.5	68.4	2.3	2,331	17.7 %	634	26.8 %
	112	0.0 %	4	0.0	0.0	100.0	100.0	0.0	1	100.0 %	0	0.0 %
	113	31.8 %	53,714	44.7	22.5	23.3	45.2	10.1	28,047	10.1 %	10,870	38.8 %
114			169,192	62.6	9.2	23.4	32.3	5.1	106,507	6.6 %	54,352	51.0 %
	100	4.5 %	7,688	83.6	2.3	11.3	13.4	3.0	6,007	6.6 %	3,119	51.9 %
	102	1.3 %	2,136	48.5	9.7	36.9	45.7	5.9	1,103	13.3 %	524	47.5 %
	103	2.5 %	4,296	17.8	27.7	52.6	79.8	2.4	2,309	16.0 %	852	36.9 %
	107	8.8 %	14,845	82.7	3.1	11.0	14.0	3.3	11,463	5.7 %	6,085	53.1 %
	108	8.6 %	14,612	83.1	1.9	10.9	12.6	4.2	11,097	3.7 %	6,283	56.6 %
	114	69.0 %	116,786	59.3	10.9	24.6	35.1	5.6	69,548	6.2 %	35,481	51.0 %
	115	5.2 %	8,829	43.8	5.7	43.0	48.3	5.9	4,980	15.3 %	2,008	40.3 %
115			168,791	45.6	12.0	22.2	33.7	20.6	85,588	8.3 %	31,795	37.1 %
	102	9.0 %	15,122	50.1	16.4	25.4	41.0	8.9	8,293	7.2 %	2,954	35.6 %
	103	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	105	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	114	11.2 %	18,824	32.6	17.8	43.7	60.9	6.5	7,265	9.5 %	2,317	31.9 %
	115	79.9 %	134,845	47.0	10.7	18.8	29.1	23.9	70,030	8.3 %	26,484	37.8 %
116			171,441	25.0	6.5	63.3	68.9	6.1	84,459	50.1 %	25,490	30.2 %
	116	98.5 %	168,945	25.0	6.5	63.2	68.8	6.1	83,104	50.0 %	25,037	30.1 %
	123	1.2 %	2,004	21.3	3.0	74.6	77.3	1.4	1,171	57.8 %	393	33.6 %
	125	0.3 %	492	30.7	3.7	60.6	63.6	5.7	184	48.9 %	60	32.6 %

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SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

PLANH302	PLANH283		Total Population: Total	%A	%B	%H	%BH	%O	Total Voter Registration: Total	SSVR-T	Turnout: Total	TO/VR
117			171,678	26.2	7.0	64.8	70.7	3.0	70,506	52.4 %	20,723	29.4 %
	117	80.0 %	137,176	25.7	6.6	65.7	71.3	3.0	58,806	49.6 %	18,052	30.7 %
	118	14.3 %	24,525	32.8	8.1	56.4	63.9	3.3	7,519	72.1 %	1,757	23.4 %
	124	5.7 %	9,777	17.0	9.4	71.9	79.9	3.1	4,181	57.4 %	914	21.9 %
118			171,805	24.8	3.8	70.3	73.3	1.8	91,362	57.0 %	26,385	28.9 %
	117	15.0 %	25,786	22.3	1.7	75.3	76.4	1.3	11,494	60.9 %	2,878	25.0 %
	118	73.0 %	125,395	23.5	3.7	71.8	74.8	1.7	67,760	59.2 %	19,332	28.5 %
	119	8.4 %	14,459	34.0	6.6	57.0	62.9	3.1	8,785	43.3 %	3,043	34.6 %
	121	3.1 %	5,320	47.6	8.3	40.4	47.8	4.6	2,845	26.7 %	1,038	36.5 %
	123	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	124	0.5 %	895	2.8	2.5	95.8	96.9	0.3	478	80.8 %	94	19.7 %
	125	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
119			171,819	23.7	9.5	65.9	74.2	2.1	89,301	30.2 %	26,514	29.7 %
	118	6.9 %	11,931	29.4	6.8	61.4	67.3	3.3	6,140	47.2 %	1,819	29.6 %
	119	79.5 %	136,670	21.8	9.4	68.2	76.5	1.8	69,960	32.6 %	20,264	29.0 %
	120	8.2 %	14,025	42.5	13.9	37.9	52.3	5.2	8,000	22.7 %	2,980	37.3 %
	121	1.3 %	2,217	47.5	7.8	42.5	49.6	2.9	1,571	25.8 %	625	39.8 %
	123	4.1 %	6,976	5.3	3.9	91.4	94.4	0.3	3,630	80.9 %	836	22.8 %
120			171,299	22.2	28.5	48.1	74.5	3.3	85,406	30.5 %	23,827	27.9 %
	119	5.0 %	8,579	21.8	27.4	51.2	76.1	2.2	3,607	33.8 %	970	26.9 %
	120	93.6 %	160,409	22.3	28.9	47.6	74.4	3.3	80,961	30.1 %	22,645	28.0 %
	121	0.6 %	1,031	41.4	7.5	48.8	55.0	3.6	223	18.8 %	84	37.7 %
	123	0.7 %	1,280	4.5	7.2	90.5	95.2	0.2	615	75.4 %	128	20.8 %
121			171,336	56.2	6.6	33.8	39.7	4.2	111,075	20.5 %	49,125	44.2 %
	120	0.3 %	577	33.6	19.1	37.8	56.2	10.2	353	20.4 %	157	44.5 %
	121	95.3 %	163,341	55.5	6.8	34.3	40.3	4.2	104,981	20.9 %	45,685	43.5 %
	122	4.3 %	7,418	71.2	2.5	23.1	25.5	3.3	5,781	14.1 %	3,283	57.0 %
122			171,294	59.2	4.2	30.4	34.2	6.7	107,625	18.3 %	52,339	48.6 %
	117	0.9 %	1,521	65.5	1.8	30.8	32.3	2.2	1,076	23.0 %	527	49.0 %
	121	1.7 %	2,958	54.8	7.1	29.0	35.8	9.4	1,625	19.1 %	756	46.5 %
	122	97.4 %	166,815	59.2	4.2	30.5	34.2	6.7	104,924	18.3 %	51,056	48.7 %
123			171,122	24.1	4.6	70.0	73.8	2.1	87,824	53.2 %	28,850	32.8 %
	116	1.5 %	2,518	4.2	2.1	93.7	95.0	0.8	1,194	89.6 %	258	21.6 %
	119	0.2 %	323	2.2	0.9	97.8	97.8	0.0	148	91.9 %	33	22.3 %
	120	0.1 %	121	43.8	3.8	47.9	52.1	4.1	85	51.8 %	31	36.5 %
	122	0.6 %	951	54.9	4.1	38.5	41.2	3.9	647	20.9 %	291	45.0 %
	123	96.7 %	165,414	24.5	4.6	69.5	73.3	2.1	84,984	52.5 %	28,129	33.1 %
	125	1.0 %	1,795	1.6	5.2	95.2	98.2	0.3	786	89.9 %	108	13.7 %
124			171,675	20.5	8.7	68.8	76.4	3.2	84,376	53.2 %	23,757	28.2 %
	117	3.9 %	6,766	36.2	12.9	46.8	58.5	5.3	3,599	32.4 %	1,262	35.1 %
	124	95.0 %	163,091	20.0	8.6	69.4	76.9	3.1	79,670	53.6 %	22,389	28.0 %
	125	1.1 %	1,818	2.0	1.2	97.1	97.7	0.3	1,107	91.0 %	186	16.8 %
125			171,504	20.9	5.2	71.7	76.0	3.1	93,504	58.0 %	27,458	29.2 %
	124	0.6 %	1,080	39.5	5.6	51.1	56.4	4.1	688	40.3 %	282	41.0 %
	125	99.4 %	170,644	20.8	5.2	71.8	76.2	3.1	93,216	58.1 %	27,176	29.2 %
126			170,355	55.4	12.7	21.5	33.6	11.0	98,832	10.2 %	48,190	48.7 %
	126	66.6 %	113,513	51.6	14.4	23.0	36.8	11.7	64,837	10.6 %	31,267	48.2 %
	130	30.2 %	51,367	63.0	9.2	18.4	27.2	9.8	30,905	9.2 %	15,430	49.9 %
	139	0.1 %	108	17.6	14.8	55.6	69.4	13.0	49	28.6 %	16	32.7 %
	150	3.2 %	5,367	64.3	8.2	19.4	27.0	8.7	3,091	10.4 %	1,477	47.8 %
127			169,083	65.5	11.8	19.2	30.6	3.9	100,400	9.9 %	48,051	47.9 %
	127	83.7 %	141,602	69.2	12.2	18.8	30.5	4.2	85,817	9.8 %	41,531	48.4 %
	128	13.3 %	22,522	73.9	6.7	17.8	24.3	1.8	12,374	8.4 %	5,664	45.8 %
	142	2.9 %	4,959	36.4	23.8	37.2	59.9	3.8	2,209	28.8 %	856	38.8 %
128			169,696	55.5	9.0	32.8	41.3	3.2	88,459	17.6 %	35,633	40.3 %
	128	74.5 %	126,392	54.5	10.9	32.5	42.9	2.5	65,359	17.1 %	25,973	39.7 %
	144	25.5 %	43,304	58.2	3.3	33.8	36.7	5.1	23,100	18.9 %	9,660	41.8 %
129			171,447	55.9	8.7	24.5	32.6	11.5	95,821	12.0 %	44,462	46.4 %
	129	84.9 %	145,499	58.4	9.4	20.8	29.6	12.0	83,641	10.6 %	39,229	46.9 %
	144	15.1 %	25,948	42.1	4.5	45.6	49.4	8.5	12,180	22.2 %	5,233	43.0 %
130			169,277	58.4	10.7	22.8	33.1	8.5	88,743	11.7 %	42,605	48.0 %
	130	59.0 %	99,916	66.7	7.8	19.6	27.1	6.2	53,116	9.6 %	26,958	50.8 %
	132	0.0 %	0	0.0	0.0	0.0	0.0	0.0	0	0.0%	0	0.0%
	135	41.0 %	69,361	46.4	14.9	27.4	41.7	11.9	35,627	14.7 %	15,647	43.9 %
131			170,771	8.1	41.9	44.3	84.9	7.0	71,323	14.8 %	25,861	36.3 %
	131	74.0 %	126,289	7.8	39.9	45.5	84.2	7.9	51,738	17.1 %	18,695	36.1 %
	137	2.6 %	4,403	12.9	31.9	44.6	74.9	12.2	2,159	21.4 %	703	32.6 %
	146	23.5 %	40,079	8.4	49.1	40.3	88.1	3.5	17,426	6.9 %	6,463	37.1 %
132			171,811	44.5	14.0	34.2	47.3	8.2	80,841	16.5 %	34,250	42.4 %
	130	1.1 %	1,891	37.6	7.2	53.0	59.9	2.5	640	18.4 %	288	45.0 %
	132	82.5 %	141,799	43.6	14.4	35.3	48.9	7.6	64,600	17.5 %	26,666	41.3 %
	133	8.4 %	14,362	69.8	6.0	10.7	16.4	15.8	9,910	6.1 %	5,335	53.8 %

* = The district in the first plan is identical to the district in the second plan.
Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and the results for write-in candidates are summed and included as "write-in". Complete official results for all years are maintained by the office of the secretary of state.
SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

			Total Population						Total Voter Registration		Turnout	
PLANH302	PLANH283		Total	%A	%B	%H	%BH	%O	Total	SSVR-T	Total	TO/VR
	135	8.0 %	13,769	28.4	21.0	43.9	63.5	8.1	5,691	23.7 %	1,961	34.5 %
133			171,746	63.4	8.7	17.6	25.9	10.7	104,831	7.0 %	56,551	53.9 %
	133	32.1 %	55,047	63.0	9.5	16.9	25.5	11.5	34,065	6.5 %	18,905	55.5 %
	134	7.2 %	12,308	68.4	5.7	14.6	20.1	11.5	7,434	7.3 %	3,809	51.2 %
	136	56.0 %	96,161	63.5	9.2	17.3	26.0	10.5	58,470	6.7 %	31,307	53.5 %
	138	4.8 %	8,230	57.4	3.3	32.8	35.6	7.0	4,854	14.1 %	2,530	52.1 %
134			171,094	69.4	4.3	16.4	20.5	10.1	114,484	9.1 %	61,111	53.4 %
	134	74.1 %	126,737	71.3	3.7	13.4	16.9	11.8	85,281	7.5 %	46,413	54.4 %
	137	0.6 %	1,059	13.4	15.0	68.0	82.1	4.5	314	26.1 %	89	28.3 %
	145	11.8 %	20,185	63.9	4.9	27.3	31.8	4.3	13,319	17.0 %	6,738	50.6 %
	146	3.9 %	6,721	61.6	14.3	18.9	32.7	5.6	4,626	8.5 %	2,400	51.9 %
	147	6.9 %	11,801	68.0	4.0	20.6	24.4	7.6	7,820	9.8 %	3,775	48.3 %
	148	2.7 %	4,591	70.0	3.1	24.1	26.9	3.1	3,124	15.8 %	1,696	54.3 %
135			171,315	36.7	14.7	38.4	52.3	11.0	83,139	18.9 %	34,856	41.9 %
	126	13.8 %	23,629	23.3	19.3	46.1	64.5	12.2	9,568	24.1 %	3,168	33.1 %
	135	43.7 %	74,863	42.7	14.0	30.2	43.5	13.8	38,066	15.4 %	16,564	43.5 %
	138	8.5 %	14,541	48.1	5.3	26.4	31.5	20.3	7,421	11.7 %	3,433	46.3 %
	139	23.1 %	39,571	30.2	16.6	48.3	64.0	5.8	18,937	23.9 %	7,586	40.1 %
	148	10.9 %	18,711	34.2	14.6	49.8	63.6	2.2	9,147	23.1 %	4,105	44.9 %
136			167,083	69.8	9.3	18.6	27.6	2.6	102,532	6.4 %	46,081	44.9 %
	3	63.0 %	105,215	64.4	12.0	22.1	33.7	1.8	65,927	7.4 %	27,015	41.0 %
	15	11.5 %	19,209	74.4	2.9	15.5	18.2	7.4	9,921	5.5 %	4,893	49.3 %
	16	25.5 %	42,579	81.1	5.5	11.4	16.7	2.2	26,684	4.3 %	14,173	53.1 %
137			171,186	15.4	28.0	52.0	70.8	13.8	58,902	19.3 %	19,395	32.9 %
	134	1.3 %	2,194	68.6	8.1	15.5	23.1	8.4	1,685	7.8 %	1,009	59.9 %
	136	28.1 %	48,079	19.5	27.3	46.1	72.0	8.6	16,102	14.8 %	4,869	30.2 %
	137	52.3 %	89,601	10.2	17.5	55.8	72.2	17.6	29,283	22.3 %	9,156	31.3 %
	146	18.3 %	31,312	20.3	16.9	52.6	68.4	11.3	11,832	19.8 %	4,363	36.9 %
138			171,632	32.0	12.7	47.2	58.9	9.1	70,883	20.8 %	28,182	39.8 %
	132	15.9 %	27,340	33.0	16.7	44.2	59.9	7.1	10,825	23.9 %	3,555	32.8 %
	135	8.4 %	14,429	15.8	29.6	50.2	78.0	6.2	3,152	22.6 %	1,112	35.3 %
	138	75.6 %	129,793	33.5	10.0	47.5	56.6	9.9	56,861	20.1 %	23,493	41.3 %
	148	0.0 %	70	44.3	8.6	38.6	47.1	8.6	45	13.3 %	22	48.9 %
139			170,711	10.3	42.9	42.0	83.8	5.9	81,388	15.8 %	28,860	35.5 %
	126	11.6 %	19,774	9.0	19.9	61.6	80.4	10.5	7,135	33.4 %	1,998	28.0 %
	139	72.7 %	124,115	9.3	30.8	55.9	85.6	5.1	64,014	12.1 %	23,167	36.2 %
	140	10.2 %	17,429	5.3	22.4	66.2	87.7	7.1	5,481	34.2 %	1,585	28.9 %
	141	2.5 %	4,285	10.8	40.1	37.0	84.6	4.6	1,399	11.8 %	402	28.7 %
	148	3.0 %	5,108	57.7	3.6	34.8	38.3	4.0	3,359	19.7 %	1,708	50.8 %
140			170,679	8.2	16.0	74.8	89.8	2.0	52,362	44.4 %	12,997	24.8 %
	139	3.9 %	6,731	4.2	42.3	47.1	88.4	7.4	2,978	23.3 %	1,002	33.6 %
	140	74.5 %	127,088	9.3	9.4	80.6	89.2	1.5	39,748	51.1 %	9,891	24.9 %
	141	21.6 %	36,860	5.0	33.9	59.5	92.2	2.8	9,636	23.4 %	2,104	21.8 %
141			170,952	16.8	43.3	35.6	80.0	3.2	79,453	13.0 %	28,047	35.3 %
	127	6.0 %	10,232	28.1	30.6	38.5	68.1	3.8	4,766	20.3 %	1,565	32.8 %
	141	68.0 %	116,265	9.7	53.1	35.8	87.9	2.4	54,940	12.2 %	18,352	33.4 %
	142	10.4 %	17,703	29.7	27.8	38.2	65.3	5.0	7,108	15.3 %	2,818	39.3 %
	150	15.6 %	26,752	34.8	28.4	32.2	59.6	5.6	12,579	12.6 %	5,312	42.2 %
142			170,597	15.0	40.1	43.3	82.5	2.4	79,869	19.3 %	29,004	36.3 %
	127	7.1 %	12,149	47.3	23.7	25.2	48.0	4.6	5,351	15.6 %	2,422	45.3 %
	140	0.1 %	133	10.5	69.2	20.3	88.7	0.8	76	9.2 %	17	22.4 %
	141	5.3 %	9,088	3.9	57.7	38.7	95.4	0.7	4,425	16.3 %	1,484	33.5 %
	142	65.5 %	111,797	13.5	43.3	42.0	84.3	2.2	53,661	17.5 %	19,213	35.8 %
	143	21.7 %	37,023	12.1	31.8	54.4	85.2	2.7	16,181	27.6 %	5,826	36.0 %
	144	0.0 %	42	50.0	2.4	47.6	50.0	0.0	21	14.3 %	5	23.8 %
	148	0.2 %	365	3.3	24.1	72.9	96.7	0.0	154	34.4 %	37	24.0 %
143			169,126	14.9	8.6	76.1	83.9	1.2	62,233	32.8 %	17,322	27.8 %
	128	11.6 %	19,637	16.8	19.6	63.2	81.9	1.3	8,304	40.2 %	2,058	24.8 %
	143	55.7 %	94,160	11.6	5.4	83.0	87.6	0.8	32,329	60.4 %	8,700	26.9 %
	144	25.9 %	43,738	24.2	12.2	62.2	73.7	2.1	16,495	34.4 %	5,251	31.8 %
	148	6.9 %	11,591	3.6	1.6	94.9	95.8	0.6	5,105	85.4 %	1,313	25.7 %
144			170,004	15.3	6.8	76.4	82.4	2.4	56,540	50.0 %	16,206	28.7 %
	143	16.2 %	27,542	11.9	2.0	85.7	87.2	0.9	8,354	61.6 %	1,913	22.9 %
	144	28.7 %	48,846	26.0	2.7	70.9	73.0	1.0	17,797	41.0 %	5,904	33.2 %
	145	42.9 %	72,919	11.8	6.3	79.0	84.5	3.8	24,503	56.4 %	6,799	27.7 %
	147	12.2 %	20,697	6.6	24.6	67.5	90.9	2.5	5,886	34.0 %	1,590	27.0 %
145			169,251	12.2	12.3	71.3	82.7	5.1	65,976	48.6 %	21,319	32.3 %
	129	15.5 %	26,252	28.7	13.8	46.8	59.8	11.4	13,828	29.0 %	5,208	37.7 %
	131	3.9 %	6,541	7.6	29.8	62.3	90.9	1.5	2,077	28.9 %	688	32.7 %
	142	0.8 %	1,428	15.7	65.9	18.8	83.1	1.2	446	15.9 %	117	26.2 %
	143	2.2 %	3,757	1.7	1.4	97.4	98.1	0.2	1,385	86.3 %	303	21.9 %
	145	41.3 %	69,946	6.9	4.8	87.6	91.6	1.5	23,636	67.6 %	7,075	29.9 %

* = The district in the first plan is identical to the district in the second plan.
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SSVR-T = Total Spanish surname voter registration

Plan Overlap Analysis

HOUSE DISTRICTS
PLANH302 Compared with PLANH283
2010 General Election

PLANH302	PLANH283		Total Population Total	%A	%B	%H	%BH	%O	Total Voter Registration Total	SSVR-T	Turnout Total	TO/VR
	147	29.0 %	49,006	13.3	20.4	58.8	78.0	8.7	19,434	33.9 %	6,532	33.6 %
	148	7.3 %	12,321	7.7	7.7	84.2	91.2	1.1	5,170	70.5 %	1,404	27.2 %
146			169,971	12.3	41.5	41.6	82.0	5.6	75,122	11.7 %	28,583	38.0 %
	131	21.9 %	37,233	7.2	51.2	38.8	89.0	3.8	18,373	15.4 %	7,434	40.5 %
	134	6.8 %	11,545	61.0	12.7	17.4	29.7	9.3	7,365	7.5 %	3,946	53.6 %
	137	29.2 %	49,567	6.5	11.2	75.7	85.5	7.9	7,830	31.5 %	1,825	23.3 %
	146	42.1 %	71,626	11.1	62.0	23.4	84.4	4.4	41,554	7.0 %	15,378	37.0 %
147			169,724	23.5	44.3	21.8	65.3	9.2	97,886	9.4 %	35,538	36.3 %
	131	0.6 %	953	8.0	27.6	61.8	89.0	3.0	334	32.3 %	62	18.6 %
	134	9.7 %	16,505	57.6	10.5	12.8	23.1	19.3	10,289	7.3 %	4,862	47.3 %
	142	13.0 %	22,119	15.0	57.2	28.1	84.0	1.0	7,674	9.9 %	2,309	30.1 %
	145	2.5 %	4,317	34.3	23.8	38.7	62.1	3.6	2,262	28.1 %	817	36.1 %
	146	14.6 %	24,747	27.0	29.1	14.2	42.6	30.4	11,431	9.3 %	3,914	34.2 %
	147	55.6 %	94,369	21.9	55.0	19.3	73.4	4.7	62,830	6.6 %	22,710	36.1 %
	148	4.0 %	6,714	22.4	6.9	69.0	75.6	2.1	3,066	55.3 %	864	28.2 %
148			169,642	15.6	7.9	75.4	82.4	1.9	61,329	47.7 %	19,591	31.9 %
	134	3.0 %	5,132	62.1	7.1	26.4	32.9	5.0	3,458	13.8 %	1,833	53.0 %
	138	7.3 %	12,378	20.8	6.7	69.8	75.9	3.4	3,956	25.8 %	1,519	38.4 %
	139	3.1 %	5,208	14.0	20.7	63.6	83.2	2.8	1,682	22.5 %	488	29.0 %
	140	15.4 %	26,082	6.9	11.0	82.3	92.4	0.7	8,944	59.6 %	2,278	25.5 %
	142	0.9 %	1,535	0.9	27.2	72.4	98.6	0.5	706	36.0 %	205	29.0 %
	145	2.0 %	3,454	44.6	4.2	47.6	51.4	3.9	1,918	28.2 %	801	41.8 %
	148	68.3 %	115,853	14.4	6.6	78.0	83.8	1.8	40,665	52.2 %	12,467	30.7 %
149			171,875	23.1	27.5	29.6	55.9	19.0	77,421	14.1 %	29,046	37.5 %
	131	2.5 %	4,211	7.1	48.0	36.6	83.1	9.8	1,900	17.2 %	552	29.1 %
	132	2.2 %	3,844	75.5	4.5	12.5	16.8	7.6	2,766	6.3 %	1,453	52.5 %
	133	60.6 %	103,632	28.0	27.0	27.0	53.0	19.0	48,314	12.9 %	19,033	39.4 %
	136	13.0 %	22,303	26.8	32.7	24.7	56.1	17.1	10,104	10.9 %	3,527	34.9 %
	137	16.9 %	28,968	7.9	26.2	42.0	67.0	25.1	11,560	22.2 %	3,573	30.9 %
	138	4.7 %	8,117	29.8	23.5	35.6	57.9	12.3	2,777	18.1 %	908	32.7 %
150			171,314	59.7	11.3	22.3	33.1	7.2	91,540	11.3 %	43,000	47.0 %
	126	7.2 %	12,340	61.3	9.3	18.6	27.5	11.2	6,023	9.9 %	3,014	50.0 %
	130	13.1 %	22,358	61.5	8.9	23.8	32.3	6.1	10,374	11.0 %	4,603	44.4 %
	150	79.7 %	136,616	59.3	11.9	22.4	33.7	7.0	75,143	11.5 %	35,383	47.1 %

* = The district in the first plan is identical to the district in the second plan.
Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and the results for write-in candidates are summed and included as "write-in". Complete official results for all years are maintained by the office of the secretary of state.
SSVR-T = Total Spanish surname voter registration

Population and Voter Data

HOUSE DISTRICTS - PLANH302

District	Deviation		Population Total	%A	%B	%H	%BH	%O	General Election	Turnout	Total Voter Registration Total	SSVR	TO/VR	Non-Suspense Voter Registration Total	SSVR	TO/VR
1	-1,814	Total:	165,823	70.8	20.1	6.9	26.7	2.5	2010	41,317	100,684	1.78%	41.04%	87,406	1.69%	47.27%
	-1.08%	VAP:	125,927	73.6	18.4	5.8	24.0	2.4	2008	63,320	106,576	1.61%	59.41%	88,867	1.53%	71.25%
2	6,232	Total:	173,869	78.2	7.0	12.6	19.4	2.4	2010	39,699	103,181	4.13%	38.48%	89,608	3.98%	44.3%
	3.72%	VAP:	130,806	81.4	6.4	10.0	16.2	2.4	2008	63,231	106,362	3.95%	59.45%	90,204	3.87%	70.1%
3	3,337	Total:	170,974	72.7	6.5	16.1	22.3	5.0	2010	36,960	94,631	6.46%	39.06%	84,019	6.39%	43.99%
	1.99%	VAP:	120,035	75.7	5.8	13.9	19.5	4.8	2008	64,546	92,901	6.44%	69.48%	82,259	6.4%	78.47%
4	-2,292	Total:	165,345	73.6	9.6	14.9	24.3	2.0	2010	35,139	96,347	5.55%	36.47%	84,485	5.48%	41.59%
	-1.37%	VAP:	121,168	77.3	8.9	11.9	20.7	2.0	2008	58,171	97,496	5.33%	59.67%	86,361	5.31%	67.36%
5	-7,576	Total:	160,061	69.5	11.6	17.5	28.9	1.6	2010	40,552	96,960	4.72%	41.82%	83,807	4.68%	48.39%
	-4.52%	VAP:	119,871	73.9	11.2	13.5	24.5	1.6	2008	60,314	98,517	4.32%	61.22%	86,542	4.35%	69.69%
6	-7,437	Total:	160,200	59.9	19.8	18.1	37.6	2.5	2010	39,159	90,640	5.17%	43.2%	79,267	5.16%	49.4%
	-4.44%	VAP:	119,452	64.5	18.8	14.5	33.2	2.4	2008	60,911	97,705	5.02%	62.34%	82,424	5.05%	73.9%
7	-6,598	Total:	161,039	66.0	18.2	14.1	31.9	2.1	2010	35,335	95,164	3.58%	37.13%	79,294	3.53%	44.56%
	-3.94%	VAP:	120,296	70.1	16.9	11.2	27.8	2.1	2008	57,774	99,881	3.35%	57.84%	82,858	3.27%	69.73%
8	-6,539	Total:	161,098	64.5	15.8	18.5	33.9	1.6	2010	34,800	87,396	6.47%	39.82%	77,923	6.42%	44.66%
	-3.90%	VAP:	123,550	67.4	15.9	15.4	31.1	1.5	2008	53,595	90,173	6.11%	59.44%	78,820	6.05%	68.0%
9	-918	Total:	166,719	70.3	19.3	9.1	28.2	1.5	2010	43,081	104,617	2.09%	41.18%	93,598	2.02%	46.03%
	-0.55%	VAP:	125,947	73.2	18.6	6.9	25.4	1.4	2008	66,683	107,620	1.97%	61.96%	93,589	1.94%	71.25%
10	-1,490	Total:	166,147	67.4	9.1	22.0	30.8	1.8	2010	34,786	95,480	10.49%	36.43%	85,232	10.37%	40.81%
	-0.89%	VAP:	119,413	71.7	8.4	18.4	26.6	1.7	2008	60,105	96,235	10.55%	62.46%	85,495	10.33%	70.3%
11	1,062	Total:	168,699	63.3	17.8	17.5	34.9	1.7	2010	36,768	90,042	4.68%	40.83%	78,522	4.6%	46.83%
	0.63%	VAP:	128,086	67.1	17.4	13.9	31.2	1.7	2008	58,947	93,834	4.44%	62.82%	82,630	4.37%	71.34%
12	-3,219	Total:	164,418	66.2	16.7	15.9	32.3	1.5	2010	40,896	96,106	5.76%	42.55%	85,045	5.71%	48.09%
	-1.92%	VAP:	124,630	69.7	16.1	13.0	28.9	1.5	2008	59,440	100,222	5.39%	59.31%	88,333	5.28%	67.29%
13	-1,242	Total:	166,395	65.2	12.2	21.9	33.6	1.3	2010	48,325	104,721	12.12%	46.15%	95,419	11.67%	50.65%
	-0.74%	VAP:	128,361	69.3	11.3	18.4	29.4	1.2	2008	65,642	106,409	12.05%	61.69%	97,719	11.54%	67.17%
14	-5,016	Total:	162,621	56.4	12.6	24.4	36.5	7.1	2010	27,360	69,224	12.35%	39.52%	53,154	12.64%	51.47%
	-2.99%	VAP:	131,036	61.1	10.7	21.1	31.5	7.5	2008	44,888	73,529	12.3%	61.05%	57,124	12.41%	78.58%
15	-1,455	Total:	166,182	73.7	5.2	16.2	21.1	5.3	2010	46,596	98,801	6.84%	47.16%	84,813	6.75%	54.94%
	-0.87%	VAP:	122,026	76.4	4.6	14.2	18.6	5.0	2008	64,696	95,364	6.79%	67.84%	82,601	6.77%	78.32%
16	-1,871	Total:	165,766	63.2	5.3	29.7	34.6	2.2	2010	32,361	79,543	9.82%	40.68%	68,365	9.81%	47.34%
	-1.12%	VAP:	119,264	68.2	4.8	25.1	29.6	2.2	2008	45,734	79,897	9.61%	57.24%	68,899	9.69%	66.38%
17	-1,794	Total:	165,843	54.6	9.1	35.2	43.7	1.7	2010	41,399	93,991	19.44%	44.05%	82,869	19.24%	49.96%
	-1.07%	VAP:	122,575	59.7	8.7	30.2	38.5	1.7	2008	57,034	94,796	19.16%	60.16%	82,855	18.78%	68.84%
18	2,251	Total:	169,888	66.0	16.1	16.4	32.2	1.8	2010	36,730	89,203	6.03%	41.18%	75,334	5.89%	48.76%
	1.34%	VAP:	132,877	68.0	16.2	14.2	30.2	1.8	2008	49,805	92,385	5.69%	53.91%	77,271	5.68%	64.45%
19	4,332	Total:	171,969	79.2	11.9	7.1	18.9	1.9	2010	44,387	114,205	2.6%	38.87%	102,436	2.61%	43.33%
	2.58%	VAP:	131,682	80.7	11.3	6.3	17.5	1.8	2008	66,898	117,736	2.45%	56.82%	104,767	2.41%	63.85%
20	-4,152	Total:	163,485	72.9	4.3	21.3	25.2	1.9	2010	49,954	100,595	8.91%	49.66%	88,960	8.45%	56.15%
	-2.48%	VAP:	124,125	77.2	3.8	17.5	21.1	1.8	2008	67,857	99,816	9.01%	67.98%	89,869	8.7%	75.51%
21	-156	Total:	167,481	79.9	8.0	8.7	16.6	3.5	2010	44,533	105,338	4.71%	42.28%	92,938	4.71%	47.92%
	-0.09%	VAP:	126,815	82.6	7.0	7.3	14.2	3.2	2008	65,964	110,109	4.57%	59.91%	96,543	4.54%	68.33%
22	-1,008	Total:	166,629	27.9	48.8	19.8	68.0	4.1	2010	29,547	89,370	6.09%	33.06%	77,226	6.21%	38.26%
	-0.60%	VAP:	126,390	31.9	46.8	17.6	63.9	4.2	2008	52,112	93,586	6.02%	55.68%	80,444	6.15%	64.78%
23	-4,202	Total:	163,435	51.4	20.1	26.0	45.5	3.1	2010	38,371	103,849	14.66%	36.95%	83,970	14.99%	45.7%
	-2.51%	VAP:	123,531	55.5	19.0	22.7	41.4	3.2	2008	55,490	110,125	14.25%	50.39%	91,769	14.41%	60.47%

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24	-4,667	Total:	162,970	69.6	7.7	18.0	25.3	5.1	2010	47,460	161,750	10.33%	46.64%	87,959	10.28%	53.96%
	-2.78%	VAP:	118,696	72.7	7.0	15.6	22.4	4.9	2008	64,434	102,151	10.0%	63.08%	87,357	10.0%	73.76%
25	7,285	Total:	174,922	54.8	12.0	31.3	42.8	2.3	2010	39,125	97,454	17.96%	40.15%	83,042	17.84%	47.11%
	4.35%	VAP:	129,637	58.9	11.9	27.2	38.8	2.3	2008	58,134	100,693	17.5%	57.73%	87,046	17.34%	66.79%
26	-3,968	Total:	163,669	29.2	19.0	21.7	40.0	30.9	2010	33,910	83,489	13.08%	40.62%	73,712	13.17%	46.0%
	-2.37%	VAP:	117,096	32.0	17.2	19.9	36.7	31.4	2008	51,791	79,446	13.2%	65.19%	71,882	13.27%	72.05%
27	-4,028	Total:	163,609	21.5	43.6	23.6	66.2	12.3	2010	40,605	90,855	11.92%	44.69%	78,495	12.17%	51.73%
	-2.40%	VAP:	116,001	23.9	42.6	21.2	63.1	13.0	2008	62,177	91,217	12.03%	68.16%	82,684	12.04%	75.2%
28	-3,720	Total:	163,917	50.6	10.2	25.5	35.1	14.3	2010	39,713	82,778	15.28%	47.98%	72,393	14.87%	54.86%
	-2.22%	VAP:	112,336	53.0	9.8	23.8	33.4	13.6	2008	55,080	79,502	15.95%	69.28%	72,024	15.64%	76.47%
29	7,309	Total:	174,946	50.4	13.5	26.2	39.3	10.3	2010	40,110	94,233	15.43%	42.56%	81,456	15.49%	49.24%
	4.36%	VAP:	123,575	54.2	12.8	23.3	35.8	9.9	2008	59,184	93,101	15.07%	63.57%	82,524	14.98%	71.72%
30	-3,760	Total:	163,877	51.3	12.6	27.6	39.7	8.9	2010	43,540	94,441	16.6%	46.1%	84,402	16.05%	51.59%
	-2.24%	VAP:	117,603	55.4	11.9	24.4	36.0	8.6	2008	60,174	92,679	16.64%	64.93%	83,591	16.17%	71.99%
31	-4,668	Total:	162,969	3.8	0.4	95.6	95.8	0.4	2010	12,207	65,808	89.89%	18.55%	59,346	90.26%	20.57%
	-2.78%	VAP:	103,520	4.4	0.4	94.9	95.1	0.5	2008	24,801	61,708	91.12%	40.19%	58,817	91.47%	42.17%
32	514	Total:	168,151	54.0	5.1	38.5	43.1	3.0	2010	40,219	103,458	27.43%	38.87%	87,638	27.38%	45.89%
	0.31%	VAP:	127,641	59.0	4.5	33.7	38.0	3.0	2008	61,664	104,857	27.94%	58.81%	91,881	26.95%	67.11%
33	-12	Total:	167,625	28.3	4.2	66.8	70.3	1.4	2010	27,668	90,580	54.03%	30.55%	74,346	54.56%	37.22%
	-0.01%	VAP:	123,640	32.0	3.9	62.9	66.4	1.6	2008	47,224	95,861	54.42%	49.26%	82,206	55.04%	57.45%
34	203	Total:	167,840	29.1	5.0	63.1	67.4	3.5	2010	30,683	93,674	53.47%	32.76%	78,064	54.67%	39.3%
	0.12%	VAP:	122,659	32.3	4.6	59.9	64.2	3.6	2008	51,910	97,097	53.35%	53.46%	83,264	54.5%	62.34%
35	990	Total:	168,627	10.7	0.6	88.4	88.7	0.6	2010	17,593	61,103	73.67%	28.79%	52,371	74.21%	33.59%
	0.59%	VAP:	109,154	13.9	0.5	85.1	85.4	0.7	2008	27,751	61,205	75.03%	45.34%	52,091	74.97%	53.27%
36	1,326	Total:	168,963	6.1	0.6	92.7	92.9	1.0	2010	13,673	68,779	82.58%	19.88%	60,595	83.8%	22.56%
	0.79%	VAP:	110,963	7.9	0.6	90.8	91.1	1.0	2008	27,860	70,930	83.04%	39.28%	61,749	84.71%	45.12%
37	1,451	Total:	169,088	9.4	0.6	89.8	90.0	0.6	2010	17,166	74,171	77.19%	23.14%	66,019	78.22%	26.0%
	0.87%	VAP:	113,454	11.9	0.6	87.1	87.4	0.7	2008	30,385	74,781	78.79%	40.63%	67,693	79.66%	44.89%
38	577	Total:	168,214	9.1	0.7	89.3	89.6	1.2	2010	16,531	69,296	77.01%	23.86%	62,334	77.74%	26.52%
	0.34%	VAP:	110,865	11.6	0.6	86.7	87.0	1.3	2008	31,128	68,617	78.12%	45.36%	62,670	78.89%	49.67%
39	1,022	Total:	168,659	8.3	0.5	91.1	91.2	0.5	2010	20,131	71,983	81.43%	27.97%	63,697	82.46%	31.6%
	0.61%	VAP:	110,751	11.3	0.4	88.0	88.1	0.5	2008	31,597	73,970	81.55%	42.72%	64,571	82.97%	48.93%
40	1,025	Total:	168,662	4.7	1.0	93.8	94.5	0.8	2010	12,339	55,174	85.44%	22.36%	47,341	86.14%	26.06%
	0.61%	VAP:	108,086	6.1	1.1	92.1	93.0	0.9	2008	24,317	56,849	86.19%	42.77%	47,459	87.11%	51.24%
41	1,139	Total:	168,776	13.2	1.0	83.3	83.9	2.8	2010	18,072	70,167	67.8%	25.76%	58,628	68.4%	30.82%
	0.68%	VAP:	115,033	16.0	0.9	80.4	81.0	3.0	2008	35,686	73,273	67.64%	48.7%	59,917	68.02%	59.56%
42	-5,316	Total:	162,321	3.4	0.5	95.7	95.8	0.8	2010	22,289	78,088	85.63%	28.54%	70,980	85.85%	31.4%
	-3.17%	VAP:	108,129	3.8	0.5	95.1	95.3	0.9	2008	34,764	77,622	87.93%	44.79%	72,940	88.33%	47.66%
43	3,774	Total:	171,411	29.2	2.0	68.0	69.6	1.2	2010	31,898	111,702	62.55%	28.56%	98,654	64.09%	32.33%
	2.25%	VAP:	124,591	32.0	2.0	65.0	66.7	1.3	2008	54,533	117,724	61.79%	46.32%	104,930	62.59%	51.97%
44	6,814	Total:	174,451	55.8	6.1	36.3	41.8	2.5	2010	41,718	101,604	24.86%	41.06%	90,000	24.7%	46.35%
	4.06%	VAP:	126,713	59.5	5.6	32.7	38.0	2.4	2008	63,965	100,690	25.26%	63.53%	89,672	25.0%	71.33%
45	-33	Total:	167,604	59.9	4.0	34.2	37.6	2.5	2010	43,594	104,849	20.66%	41.58%	85,534	20.74%	50.97%
	-0.02%	VAP:	126,549	64.2	3.6	30.0	33.3	2.5	2008	63,996	104,323	20.43%	61.36%	87,886	20.33%	72.82%
46	3,185	Total:	170,822	27.4	22.8	44.5	66.0	6.5	2010	26,379	79,752	17.64%	33.08%	65,040	17.47%	40.56%
	1.90%	VAP:	122,549	32.7	22.2	39.0	60.5	6.8	2008	48,221	79,791	18.06%	60.43%	68,221	17.77%	70.68%
47	3,479	Total:	171,116	74.3	2.5	15.3	17.6	8.1	2010	53,839	113,986	8.03%	47.23%	98,816	7.88%	54.48%
	2.08%	VAP:	125,525	76.9	2.3	13.6	15.8	7.3	2008	79,249	109,496	8.0%	72.38%	97,499	7.94%	81.28%
48	3,095	Total:	170,732	66.6	3.8	23.0	26.4	7.1	2010	56,427	120,084	13.01%	46.99%	99,985	12.63%	56.44%
	1.85%	VAP:	132,767	69.5	3.4	20.6	23.7	6.8	2008	85,887	122,353	13.28%	70.2%	106,050	12.98%	80.99%
49	2,684	Total:	170,321	59.2	5.2	27.8	32.5	8.3	2010	43,013	114,316	11.37%	37.63%	85,511	11.11%	50.3%
	1.60%	VAP:	145,871	63.0	4.6	23.9	28.1	8.9	2008	76,695	118,942	11.54%	64.48%	97,836	11.49%	78.39%
50	3,306	Total:	170,943	50.9	11.5	27.4	38.2	10.9	2010	38,424	98,881	12.65%	38.86%	80,347	12.23%	47.82%

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	1.97%	VAP:	128,740	55.3	10.5	24.0	34.0	10.7	2008	66,044	101,491	12.91%	65.07%	85,001	12.61%	77.7%
51	2,695	Total:	170,332	24.8	10.5	62.9	72.2	3.0	2010	20,140	77,329	36.25%	26.04%	58,726	38.19%	34.29%
	1.61%	VAP:	124,577	30.8	10.1	56.4	65.7	3.5	2008	41,623	79,350	37.11%	52.45%	64,758	37.91%	64.27%
52	-3,963	Total:	163,674	55.3	10.6	28.9	38.7	6.0	2010	32,815	83,574	15.3%	39.26%	70,909	15.05%	46.28%
	-2.36%	VAP:	112,729	59.4	9.5	25.7	34.7	5.9	2008	54,835	81,207	15.71%	67.52%	70,901	15.45%	77.34%
53	-4,740	Total:	162,897	65.9	1.7	31.1	32.5	1.6	2010	50,179	106,904	19.94%	46.94%	93,674	19.75%	53.57%
	-2.83%	VAP:	127,381	70.2	1.5	26.8	28.1	1.7	2008	69,407	109,591	19.64%	63.33%	96,251	19.36%	72.11%
54	-2,492	Total:	165,145	38.7	34.5	21.9	53.9	7.3	2010	15,880	72,813	13.34%	21.81%	52,113	13.16%	30.47%
	-1.49%	VAP:	115,049	42.8	31.5	19.7	49.5	7.7	2008	39,839	77,903	13.75%	51.14%	59,166	13.59%	67.33%
55	-2,870	Total:	164,767	65.6	11.0	20.8	31.1	3.3	2010	35,717	94,564	10.73%	37.77%	79,551	10.37%	44.9%
	-1.71%	VAP:	121,870	69.9	9.8	17.4	26.9	3.2	2008	58,385	97,309	10.76%	60.0%	83,167	10.53%	70.2%
56	-5,336	Total:	162,301	60.1	13.1	24.6	37.2	2.7	2010	40,212	89,585	11.86%	44.89%	75,673	11.71%	53.14%
	-3.18%	VAP:	121,546	65.0	11.8	20.8	32.3	2.8	2008	57,516	93,984	11.96%	61.2%	79,882	11.7%	72.0%
57	-4,930	Total:	162,707	60.2	18.7	19.9	38.0	1.8	2010	39,549	91,855	8.79%	43.06%	80,016	8.63%	49.43%
	-2.94%	VAP:	121,864	64.6	17.4	16.5	33.6	1.8	2008	56,055	96,543	8.76%	58.06%	83,516	8.53%	67.12%
58	1,509	Total:	169,146	77.0	3.0	17.9	20.7	2.3	2010	36,846	93,150	7.91%	39.56%	81,025	7.75%	45.47%
	0.90%	VAP:	123,826	80.4	2.6	14.9	17.4	2.2	2008	57,600	94,924	7.52%	60.68%	82,224	7.34%	70.05%
59	-4,028	Total:	163,609	69.8	9.2	18.6	27.1	3.2	2010	37,921	91,056	9.29%	36.15%	73,463	8.92%	44.81%
	-2.40%	VAP:	122,193	73.5	8.3	15.6	23.5	3.0	2008	52,597	94,107	9.19%	55.89%	77,708	8.78%	67.69%
60	1,863	Total:	169,500	76.4	3.8	18.5	22.1	1.5	2010	41,868	101,446	9.81%	41.27%	89,427	9.56%	46.82%
	1.11%	VAP:	130,018	79.5	3.7	15.4	19.0	1.5	2008	63,106	105,594	9.45%	59.76%	91,677	9.1%	68.84%
61	472	Total:	168,109	85.8	1.6	10.5	12.0	2.2	2010	46,541	107,666	4.33%	43.23%	95,005	4.1%	48.99%
	0.28%	VAP:	127,338	87.9	1.5	8.6	10.0	2.1	2008	71,673	108,102	4.19%	66.3%	95,682	4.03%	74.91%
62	-7,614	Total:	160,023	79.3	6.9	10.7	17.4	3.3	2010	35,820	95,524	3.3%	37.5%	83,351	3.18%	42.97%
	-4.54%	VAP:	122,203	82.2	6.2	8.6	14.7	3.1	2008	59,769	99,101	3.12%	60.31%	87,134	3.04%	68.59%
63	-1,498	Total:	166,139	71.9	5.4	15.4	20.5	7.6	2010	39,462	99,299	6.16%	39.74%	86,111	5.99%	45.83%
	-0.89%	VAP:	115,765	74.8	5.0	13.3	18.1	7.0	2008	68,971	99,005	6.21%	69.66%	87,159	6.14%	79.13%
64	-1,746	Total:	165,891	66.5	9.3	19.2	28.0	5.5	2010	31,543	89,928	7.56%	35.08%	71,955	7.28%	43.84%
	-1.04%	VAP:	126,950	69.5	8.9	16.4	25.0	5.5	2008	60,891	92,954	7.6%	65.51%	78,160	7.44%	77.91%
65	-1,895	Total:	165,742	51.9	13.6	21.4	34.5	13.6	2010	29,362	88,340	8.45%	33.24%	69,253	8.18%	42.4%
	-1.13%	VAP:	124,977	55.8	12.7	18.6	31.0	13.2	2008	59,023	91,962	8.56%	64.18%	75,231	8.43%	78.46%
66	5,059	Total:	172,696	60.0	9.5	10.0	19.1	20.8	2010	35,887	97,962	4.22%	36.63%	82,689	3.85%	43.4%
	3.02%	VAP:	131,434	62.4	9.3	9.1	18.2	19.4	2008	71,811	101,744	4.29%	70.58%	85,338	4.0%	84.15%
67	4,880	Total:	172,517	58.9	8.2	17.0	24.9	16.3	2010	35,300	95,823	5.96%	36.84%	83,561	5.75%	42.24%
	2.91%	VAP:	126,746	62.6	7.4	14.9	22.0	15.4	2008	67,664	98,300	6.0%	68.83%	85,587	5.86%	79.06%
68	1,752	Total:	169,389	81.1	2.2	14.9	16.9	2.0	2010	43,120	106,988	5.99%	40.3%	94,302	5.78%	45.73%
	1.05%	VAP:	127,914	84.3	1.9	12.0	13.8	1.9	2008	66,312	109,548	5.8%	60.53%	96,844	5.53%	68.47%
69	398	Total:	168,035	67.6	10.7	18.7	28.9	3.5	2010	33,469	101,362	9.77%	33.02%	81,347	9.63%	41.14%
	0.24%	VAP:	128,549	71.1	10.0	15.7	25.4	3.5	2008	59,151	106,995	9.69%	55.28%	88,151	9.53%	67.1%
70	4,313	Total:	171,950	65.2	10.9	16.9	27.3	7.4	2010	32,444	88,944	7.15%	36.48%	76,982	6.97%	42.14%
	2.57%	VAP:	116,187	68.0	10.0	15.2	24.9	7.1	2008	60,241	85,415	7.37%	70.53%	73,508	7.2%	81.95%
71	-20	Total:	167,617	65.6	7.9	24.7	31.8	2.6	2010	35,158	96,689	15.32%	36.36%	80,761	15.11%	43.53%
	-0.01%	VAP:	126,392	70.1	6.7	20.8	27.2	2.7	2008	60,761	101,869	15.27%	59.65%	85,253	14.95%	71.27%
72	1,744	Total:	169,381	56.5	5.4	36.6	41.4	2.1	2010	34,237	93,378	23.98%	36.66%	79,266	23.78%	43.19%
	1.04%	VAP:	130,485	60.2	5.1	32.8	37.6	2.2	2008	56,633	95,537	23.94%	59.[illegible]%	82,603	23.71%	68.56%
73	-918	Total:	166,719	73.5	1.5	23.3	24.5	1.9	2010	56,945	115,794	13.46%	49.18%	102,227	12.99%	55.7%
	-0.55%	VAP:	127,882	77.2	1.3	19.8	21.0	1.9	2008	77,550	114,526	13.43%	67.71%	101,860	12.98%	76.13%
74	-5,280	Total:	162,357	17.2	1.8	80.1	81.5	1.3	2010	27,967	89,121	67.56%	31.38%	78,339	69.57%	35.7%
	-3.15%	VAP:	115,236	20.5	1.9	76.6	78.2	1.3	2008	41,633	90,646	67.0%	45.93%	77,812	68.71%	53.5%
75	-7,557	Total:	160,080	5.1	1.5	92.9	94.0	1.0	2010	10,517	59,401	80.96%	17.71%	57,077	81.2%	18.43%
	-4.51%	VAP:	103,436	6.1	1.4	91.8	92.9	1.0	2008	25,364	57,737	82.85%	43.93%	53,236	83.4%	47.64%
76	-7,542	Total:	160,095	8.9	2.6	88.2	90.1	1.1	2010	17,212	85,666	80.1%	20.09%	81,047	80.72%	21.24%
	-4.50%	VAP:	116,574	10.2	2.4	86.7	88.7	1.1	2008	38,254	89,604	80.63%	42.69%	79,643	82.08%	48.03%

Texas Legislative Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and th

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77	-7,439	Total:	160,208	17.9	4.3	76.3	78.7	2.5	2010	23,048	83,004	38.52%	27.75%	77,244	58.78%	29.84%
	-4.43%	VAP:	116,123	20.7	3.9	73.4	76.7	2.6	2008	43,203	86,959	59.09%	49.68%	74,698	59.91%	57.84%
78	-7,456	Total:	160,181	20.3	5.1	73.0	77.1	2.6	2010	21,570	78,511	54.21%	27.47%	73,432	54.55%	29.37%
	-4.45%	VAP:	113,117	23.6	4.8	69.3	73.4	2.9	2008	41,375	80,229	54.25%	51.57%	69,637	55.26%	59.42%
79	-7,554	Total:	160,083	13.6	4.9	80.6	84.6	1.8	2010	16,323	73,071	68.75%	22.34%	68,699	69.16%	23.76%
	-4.51%	VAP:	110,586	15.6	4.4	78.7	82.5	1.9	2008	37,434	73,996	68.9%	50.59%	65,498	70.15%	57.15%
80	-3,153	Total:	164,484	28.5	3.5	67.2	70.3	1.2	2010	31,155	93,158	62.23%	33.44%	83,946	62.24%	37.11%
	-1.88%	VAP:	121,505	31.8	4.1	63.1	66.9	1.3	2008	45,329	95,879	61.65%	47.28%	84,642	61.51%	53.55%
81	2,047	Total:	169,684	42.0	4.7	52.1	56.2	1.8	2010	27,506	84,877	35.28%	32.41%	73,468	35.78%	37.44%
	1.22%	VAP:	120,535	47.5	4.1	46.9	50.7	1.8	2008	45,856	88,694	34.69%	51.7%	76,704	35.16%	59.78%
82	-4,403	Total:	163,234	51.6	6.9	39.9	46.3	2.2	2010	33,691	87,247	25.06%	38.62%	75,746	24.82%	44.48%
	-2.63%	VAP:	118,623	56.4	6.5	35.2	41.4	2.2	2008	54,741	90,125	24.97%	60.74%	78,465	24.61%	69.76%
83	197	Total:	167,834	61.3	4.1	33.0	36.7	2.0	2010	36,822	94,780	23.86%	38.85%	84,696	23.27%	43.48%
	0.12%	VAP:	122,712	65.3	3.7	29.2	32.7	2.0	2008	61,049	98,297	23.74%	62.11%	85,772	23.42%	71.18%
84	-133	Total:	167,504	51.2	10.8	35.1	45.1	3.6	2010	27,973	86,359	24.75%	32.39%	71,018	24.92%	39.39%
	-0.08%	VAP:	128,526	56.8	9.4	30.2	39.3	3.9	2008	55,303	97,492	25.01%	56.73%	75,882	24.6%	72.88%
85	-559	Total:	167,078	51.8	4.0	43.3	46.9	1.3	2010	33,974	96,113	27.72%	35.35%	85,186	27.01%	39.88%
	-0.33%	VAP:	120,217	57.4	3.8	37.7	41.2	1.4	2008	56,137	100,902	26.92%	55.64%	87,434	26.16%	64.21%
86	-2,454	Total:	165,183	68.9	2.8	26.3	28.8	2.3	2010	38,025	97,759	14.35%	38.9%	84,812	13.91%	44.83%
	-1.46%	VAP:	121,555	73.1	2.4	22.3	24.6	2.3	2008	65,631	100,603	14.14%	65.24%	87,480	13.61%	75.02%
87	524	Total:	168,161	51.1	8.8	35.6	43.7	5.2	2010	25,512	78,470	19.18%	32.51%	65,838	18.88%	38.75%
	0.31%	VAP:	120,765	56.8	8.0	30.5	38.3	5.0	2008	45,214	83,019	18.64%	54.46%	69,139	18.07%	65.4%
88	-2,795	Total:	164,842	67.4	8.9	17.0	25.5	7.1	2010	30,940	87,024	7.48%	35.55%	74,274	7.55%	41.66%
	-1.67%	VAP:	112,662	70.6	8.1	14.8	22.6	6.8	2008	56,896	83,050	7.53%	68.51%	72,943	7.56%	78.0%
89	4,904	Total:	172,541	63.7	10.0	14.3	24.0	12.4	2010	35,092	93,134	6.48%	37.68%	83,633	6.4%	41.96%
	2.93%	VAP:	118,092	67.1	8.9	12.4	21.1	11.8	2008	65,464	92,130	6.46%	71.06%	82,439	6.43%	79.41%
90	-3,070	Total:	164,567	18.7	9.6	70.1	79.1	2.3	2010	13,946	55,008	42.39%	25.35%	46,238	44.57%	30.16%
	-1.83%	VAP:	112,975	23.8	10.2	63.9	73.7	2.5	2008	29,450	58,181	42.29%	50.62%	49,615	43.84%	59.36%
91	-2,549	Total:	165,088	61.3	8.8	23.6	31.9	6.8	2010	32,999	90,223	9.54%	36.57%	74,802	9.11%	44.12%
	-1.52%	VAP:	122,340	66.1	7.8	19.8	27.2	6.7	2008	59,871	95,098	9.6%	62.96%	80,055	9.27%	74.79%
92	-2,837	Total:	164,800	61.8	11.9	17.5	28.9	9.3	2010	35,080	93,499	8.02%	37.52%	74,091	7.33%	47.35%
	-1.69%	VAP:	128,064	65.9	10.7	14.9	25.2	8.9	2008	64,388	99,870	8.05%	64.47%	81,707	7.57%	78.8%
93	-3,511	Total:	164,126	27.5	30.7	32.6	62.4	10.1	2010	22,570	71,993	14.42%	31.35%	57,088	14.42%	39.54%
	-2.09%	VAP:	111,206	31.9	29.1	29.2	57.7	10.5	2008	45,091	73,266	14.42%	61.54%	60,057	14.46%	75.08%
94	-3,174	Total:	164,463	52.3	14.4	25.4	39.1	8.6	2010	34,472	89,372	9.19%	38.57%	74,714	8.91%	46.14%
	-1.89%	VAP:	122,550	57.5	12.8	21.2	33.5	9.0	2008	61,169	94,166	9.18%	64.96%	79,387	8.88%	77.05%
95	-3,170	Total:	164,467	17.8	48.1	32.1	79.2	3.0	2010	26,927	79,696	9.53%	33.79%	65,071	9.5%	41.38%
	-1.89%	VAP:	114,202	22.2	47.9	27.5	74.7	3.1	2008	53,905	87,378	9.16%	61.69%	74,667	9.23%	72.19%
96	-3,713	Total:	163,924	64.4	15.3	15.4	30.3	5.3	2010	36,886	92,266	7.74%	39.98%	80,195	8.59%	46.0%
	-2.21%	VAP:	115,342	68.2	13.6	13.3	26.7	5.1	2008	62,359	89,273	8.04%	69.85%	78,809	7.92%	79.13%
97	-3,119	Total:	164,518	59.7	16.3	19.6	35.3	5.0	2010	41,340	96,229	9.11%	42.96%	81,212	9.0%	50.9%
	-1.86%	VAP:	126,501	64.9	14.2	16.3	30.2	4.9	2008	70,385	100,664	8.99%	69.92%	86,586	8.95%	81.29%
98	-3,555	Total:	164,082	78.4	3.9	11.2	14.9	6.7	2010	45,012	103,441	5.06%	43.51%	89,907	4.83%	50.07%
	-2.12%	VAP:	114,897	80.8	3.4	9.8	13.1	6.1	2008	75,364	103,436	5.05%	72.86%	90,244	4.97%	83.51%
99	-2,846	Total:	164,791	63.8	7.5	25.3	32.3	3.9	2010	31,273	84,383	11.13%	37.06%	70,637	10.9%	44.27%
	-1.70%	VAP:	122,214	68.9	6.5	20.9	27.2	4.0	2008	54,529	86,693	10.95%	62.9%	73,600	10.86%	74.09%
100	1,267	Total:	168,904	9.7	37.9	52.1	89.3	1.0	2010	17,741	67,762	20.32%	26.18%	57,356	21.61%	30.93%
	0.76%	VAP:	117,729	12.8	40.3	46.2	86.0	1.2	2008	36,009	72,762	19.6%	49.49%	61,189	20.57%	58.85%
101	-3,429	Total:	164,208	64.1	7.7	20.8	28.1	7.8	2010	27,412	80,837	11.83%	33.91%	69,372	11.93%	39.51%
	-2.05%	VAP:	111,682	67.7	6.8	18.1	24.6	7.6	2008	52,070	77,379	11.68%	67.29%	68,076	12.02%	76.49%
102	1,534	Total:	169,171	48.9	10.8	29.4	39.7	11.4	2010	38,950	89,637	7.53%	43.45%	77,544	7.35%	50.23%
	0.92%	VAP:	127,508	54.2	9.7	24.7	34.1	11.7	2008	62,785	94,388	7.4%	66.52%	81,467	7.24%	77.07%
103	1,634	Total:	169,261	16.6	6.6	74.5	80.4	3.1	2010	15,329	52,392	37.88%	29.26%	44,823	38.96%	34.2%

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Texas Legislature Council reports prior to 2008 generally do not include results for third-party, independent, or write-in candidates. Beginning in 2008, results for all third-party and independent candidates are included, and th

	0.97%	VAP:	117,014	21.1	6.8	69.1	75.3	3.6	2008	28,813	55,768	37.65%	51.67%	46,850	38.46%	61.5%
104	1,577	Total:	169,214	11.6	10.2	77.1	86.6	1.8	2010	15,216	58,754	49.51%	25.9%	52,078	50.87%	29.22%
	0.94%	VAP:	113,506	15.2	10.9	72.3	82.7	2.1	2008	30,062	61,580	48.77%	48.82%	53,761	49.99%	55.92%
105	1,688	Total:	169,325	31.9	16.0	44.7	59.9	8.2	2010	23,008	70,005	18.44%	32.87%	55,542	18.59%	41.42%
	1.01%	VAP:	122,293	37.7	15.1	39.0	53.5	8.8	2008	43,158	75,057	18.06%	57.5%	61,262	17.99%	70.45%
106	-4,610	Total:	163,027	66.6	5.7	18.6	23.9	9.6	2010	36,506	93,915	10.39%	38.87%	78,550	10.1%	46.47%
	-2.75%	VAP:	115,407	69.7	5.1	16.4	21.2	9.1	2008	62,700	92,774	10.75%	67.58%	81,230	10.55%	77.19%
107	1,840	Total:	169,477	23.0	30.8	42.3	72.3	4.7	2010	22,600	69,467	13.69%	32.53%	55,221	14.56%	40.93%
	1.10%	VAP:	120,258	28.4	30.0	37.0	66.5	5.1	2008	43,218	75,621	13.17%	57.15%	61,930	13.62%	69.79%
108	1,748	Total:	169,385	64.5	8.3	22.3	30.2	5.3	2010	41,754	102,989	8.83%	40.54%	83,747	8.62%	49.86%
	1.04%	VAP:	139,672	67.2	8.1	19.5	27.3	5.4	2008	71,522	107,662	9.25%	66.43%	87,385	9.03%	81.85%
109	1,575	Total:	169,212	22.3	55.2	20.4	74.7	3.0	2010	37,999	92,011	8.83%	41.3%	79,655	8.96%	47.7%
	0.94%	VAP:	118,388	26.6	52.9	17.9	70.3	3.1	2008	63,680	94,005	8.77%	67.74%	82,477	8.7%	77.21%
110	1,913	Total:	169,350	19.1	44.5	35.8	79.5	1.4	2010	27,059	86,079	10.06%	31.44%	75,367	10.32%	35.9%
	1.14%	VAP:	116,845	22.2	46.3	30.5	76.3	1.5	2008	50,266	90,902	9.64%	55.3%	79,154	9.81%	63.5%
111	1,146	Total:	168,783	18.3	48.5	31.2	78.9	2.7	2010	37,016	93,359	11.64%	39.65%	80,747	12.12%	45.84%
	0.68%	VAP:	120,306	22.4	48.4	26.7	74.7	2.9	2008	62,914	97,679	11.19%	64.41%	85,379	11.43%	73.69%
112	1,379	Total:	169,016	46.2	13.8	29.7	43.0	10.8	2010	32,011	87,114	11.88%	36.75%	77,556	11.97%	41.27%
	0.82%	VAP:	120,088	51.0	12.8	25.5	37.9	11.0	2008	57,875	90,100	11.77%	64.23%	79,077	11.84%	73.19%
113	1,221	Total:	168,858	43.7	20.2	30.4	50.0	6.2	2010	30,019	83,762	12.29%	35.84%	71,628	12.43%	41.91%
	0.73%	VAP:	121,133	50.2	17.8	26.0	43.4	6.4	2008	54,470	88,256	11.92%	61.72%	75,552	12.08%	72.1%
114	1,555	Total:	169,192	62.6	9.2	23.4	32.3	5.1	2010	54,352	106,507	6.63%	51.03%	92,336	6.2%	58.86%
	0.93%	VAP:	129,846	67.0	8.7	19.7	28.2	4.8	2008	79,949	112,471	6.67%	71.08%	97,258	6.25%	82.2%
115	1,154	Total:	168,791	45.6	12.0	22.2	33.7	20.6	2010	31,755	85,588	8.3%	37.1%	68,144	7.84%	46.6%
	0.69%	VAP:	129,290	49.7	11.6	19.4	30.6	19.7	2008	58,259	89,975	8.38%	64.75%	73,098	8.13%	79.7%
116	3,804	Total:	171,441	25.0	6.5	63.3	68.9	6.1	2010	25,490	84,459	50.08%	30.18%	64,891	51.09%	39.28%
	2.27%	VAP:	132,793	28.5	6.2	59.6	65.2	6.3	2008	48,753	90,889	50.83%	53.64%	71,814	51.5%	67.89%
117	3,841	Total:	171,478	26.2	7.0	64.8	70.7	3.0	2010	20,723	70,506	52.45%	29.39%	60,481	52.53%	34.26%
	2.29%	VAP:	118,741	30.1	6.7	60.4	66.6	3.3	2008	36,708	67,412	54.58%	54.45%	58,216	54.8%	63.05%
118	4,168	Total:	171,805	24.8	3.8	70.3	73.3	1.8	2010	26,385	91,362	56.95%	28.88%	77,889	57.7%	33.88%
	2.49%	VAP:	122,702	28.0	3.4	67.1	70.0	2.0	2008	46,916	94,876	57.43%	49.45%	80,862	58.49%	58.02%
119	4,182	Total:	171,819	23.7	9.5	65.9	74.2	2.1	2010	26,514	89,301	50.25%	29.69%	75,142	50.69%	35.29%
	2.49%	VAP:	123,502	27.3	8.9	62.2	70.5	2.3	2008	48,492	92,348	50.72%	52.51%	77,941	51.13%	62.22%
120	3,662	Total:	171,299	22.2	28.5	48.1	74.5	3.3	2010	23,827	85,406	30.54%	27.9%	68,334	30.6%	34.87%
	2.18%	VAP:	121,148	26.6	27.5	43.5	69.9	3.6	2008	46,801	89,638	30.49%	52.21%	72,652	30.59%	64.42%
121	3,699	Total:	171,336	56.2	6.6	33.8	39.7	4.2	2010	49,125	111,075	20.52%	44.23%	92,808	19.99%	52.93%
	2.21%	VAP:	131,448	59.8	5.9	30.6	36.1	4.0	2008	76,737	115,163	20.55%	66.63%	95,935	20.2%	79.99%
122	3,657	Total:	171,294	59.2	4.2	30.4	34.2	6.7	2010	52,339	107,625	18.33%	48.63%	93,350	18.01%	56.07%
	2.18%	VAP:	125,009	61.9	4.0	28.1	31.7	6.4	2008	75,405	102,596	18.15%	73.5%	90,057	18.08%	83.73%
123	3,485	Total:	171,122	24.1	4.6	70.0	73.8	2.1	2010	28,850	87,824	53.16%	32.85%	70,960	53.59%	40.66%
	2.08%	VAP:	132,419	28.0	4.4	65.9	69.7	2.2	2008	49,032	93,709	53.62%	52.32%	76,300	54.22%	64.26%
124	4,038	Total:	171,675	20.5	8.7	68.8	76.4	3.2	2010	23,757	84,376	53.17%	28.16%	70,716	53.93%	33.59%
	2.41%	VAP:	118,602	23.5	8.5	65.3	73.0	3.5	2008	47,649	86,726	53.66%	54.94%	73,248	54.51%	65.05%
125	3,867	Total:	171,504	20.9	5.2	71.7	76.0	3.1	2010	27,458	93,904	57.98%	29.24%	79,394	58.35%	34.58%
	2.31%	VAP:	123,123	23.8	5.0	68.5	72.9	3.2	2008	51,030	97,939	59.02%	52.1%	83,213	59.71%	61.32%
126	2,718	Total:	170,355	55.4	12.7	21.5	33.6	11.0	2010	48,190	98,882	10.15%	48.73%	87,080	10.06%	55.34%
	1.62%	VAP:	126,868	59.2	11.6	18.8	30.1	10.7	2008	67,382	99,596	9.23%	67.66%	87,728	9.77%	76.81%
127	1,446	Total:	169,083	65.5	11.8	19.2	30.6	3.9	2010	48,051	100,400	9.85%	47.86%	88,693	9.86%	54.18%
	0.86%	VAP:	120,292	69.2	10.5	16.8	27.0	3.8	2008	66,169	99,993	8.97%	66.17%	87,862	9.63%	75.31%
128	2,059	Total:	169,696	55.5	9.0	32.8	41.3	3.2	2010	35,633	88,459	17.57%	40.28%	77,064	17.47%	46.24%
	1.23%	VAP:	122,929	60.6	8.2	28.2	36.1	3.3	2008	52,557	91,052	16.4%	57.72%	78,280	17.13%	67.14%
129	3,810	Total:	171,847	55.9	8.7	24.5	32.6	11.5	2010	44,462	95,821	12.04%	46.4%	82,133	11.69%	54.13%
	2.27%	VAP:	128,510	59.9	7.8	21.5	28.9	11.2	2008	63,585	99,909	11.31%	63.64%	85,075	11.58%	74.74%

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130	1,840	Total:	169,277	58.4	10.7	22.8	33.1	8.5	2010	42,605	88,743	11.67%	48.01%	79,648	11.84%	53.49%
	0.98%	VAP:	115,929	61.1	10.2	20.5	30.4	6.5	2008	59,295	84,674	10.81%	69.86%	76,321	11.61%	77.69%
131	3,134	Total:	170,771	8.1	41.9	44.3	84.9	7.0	2010	25,861	71,323	14.77%	36.26%	60,024	15.36%	43.08%
	1.87%	VAP:	118,979	9.9	42.3	40.7	82.0	8.1	2008	41,608	73,267	13.36%	56.79%	62,904	14.99%	66.15%
132	4,174	Total:	171,811	44.5	14.0	34.2	47.3	8.2	2010	34,250	80,841	16.54%	42.37%	71,531	16.67%	47.88%
	2.49%	VAP:	116,576	48.6	12.6	31.0	43.0	8.4	2008	49,812	76,381	14.94%	65.22%	68,151	16.49%	73.09%
133	4,189	Total:	171,746	63.4	8.7	17.6	25.9	10.7	2010	56,551	104,831	7.03%	53.94%	90,190	6.36%	62.7%
	2.45%	VAP:	137,113	65.4	8.3	16.2	24.1	10.5	2008	75,792	107,956	6.58%	70.21%	93,345	6.42%	81.2%
134	1,757	Total:	171,094	69.4	4.3	16.4	20.5	10.1	2010	61,111	114,484	9.11%	53.38%	98,817	8.7%	61.84%
	2.06%	VAP:	141,384	71.0	4.3	15.3	19.4	9.6	2008	82,875	116,885	8.89%	70.9%	100,916	9.04%	82.12%
135	3,678	Total:	171,315	36.7	14.7	38.4	52.3	11.0	2010	34,856	83,139	18.86%	41.92%	72,026	19.05%	48.39%
	2.19%	VAP:	125,036	41.5	13.7	34.1	47.3	11.2	2008	51,864	83,916	17.73%	61.8%	73,230	18.92%	70.82%
136	-634	Total:	167,003	69.8	9.3	18.6	27.6	2.6	2010	46,081	102,532	6.42%	44.94%	86,213	6.48%	53.45%
	-0.38%	VAP:	121,026	72.5	9.8	15.5	25.1	2.4	2008	62,940	99,900	6.34%	63.0%	85,624	6.41%	73.51%
137	3,549	Total:	171,186	15.4	20.0	52.0	70.8	13.8	2010	19,395	58,902	19.35%	32.93%	46,545	19.91%	41.67%
	2.12%	VAP:	126,442	18.4	19.7	47.7	66.4	15.3	2008	32,538	62,458	17.86%	52.1%	50,870	19.53%	63.96%
138	3,995	Total:	171,632	32.0	12.7	47.2	58.9	9.1	2010	28,182	70,883	20.76%	39.76%	61,792	20.57%	45.61%
	2.38%	VAP:	121,090	36.8	11.5	42.6	53.4	9.8	2008	42,766	71,032	19.16%	60.21%	61,915	20.25%	69.07%
139	3,074	Total:	170,711	10.3	42.9	42.0	83.8	5.9	2010	28,860	81,388	15.8%	35.46%	69,891	16.18%	41.29%
	1.83%	VAP:	118,349	12.8	43.7	37.7	80.7	6.5	2008	46,977	83,216	14.66%	56.45%	72,178	15.88%	65.08%
140	3,042	Total:	170,679	8.2	16.0	74.8	89.8	2.0	2010	12,997	52,362	44.42%	24.82%	44,937	46.78%	28.92%
	1.81%	VAP:	112,582	10.8	16.5	71.2	86.9	2.3	2008	22,916	54,143	42.24%	42.32%	46,226	46.49%	49.57%
141	3,315	Total:	170,952	16.8	45.3	35.6	80.0	3.2	2010	28,047	79,453	13.02%	35.3%	66,769	13.08%	42.01%
	1.98%	VAP:	119,460	20.4	44.9	31.9	76.1	3.5	2008	45,295	79,693	11.87%	56.84%	67,901	12.9%	66.71%
142	2,960	Total:	170,597	15.0	40.1	43.3	82.5	2.4	2010	29,004	79,869	19.35%	36.31%	70,873	19.74%	40.92%
	1.77%	VAP:	118,538	17.0	41.9	39.1	80.4	2.6	2008	45,431	79,559	17.97%	57.1%	70,836	19.64%	64.14%
143	1,489	Total:	169,126	14.9	8.6	76.1	83.9	1.2	2010	17,322	62,233	52.84%	27.83%	54,375	54.21%	31.86%
	0.89%	VAP:	112,892	18.4	8.5	72.3	80.2	1.4	2008	27,559	64,542	50.47%	42.7%	55,823	54.0%	49.37%
144	2,367	Total:	170,004	15.3	6.8	76.4	82.4	2.4	2010	16,206	56,540	49.97%	28.66%	47,952	50.72%	33.8%
	1.41%	VAP:	114,456	19.3	6.7	71.9	78.0	2.7	2008	25,930	58,841	47.08%	44.07%	49,318	50.05%	52.58%
145	1,614	Total:	169,251	12.2	12.3	71.3	82.7	5.1	2010	21,319	65,976	48.63%	32.31%	57,996	49.92%	36.76%
	0.96%	VAP:	118,781	15.0	12.4	67.7	79.5	5.5	2008	33,616	66,962	47.3%	50.2%	58,886	50.71%	57.09%
146	2,334	Total:	169,971	12.3	41.5	41.6	82.0	5.6	2010	28,583	75,122	11.67%	38.05%	63,435	11.77%	45.06%
	1.39%	VAP:	122,042	14.6	42.0	38.0	79.2	6.2	2008	45,313	77,933	11.01%	58.14%	67,401	11.76%	67.23%
147	2,087	Total:	169,724	25.5	44.3	21.8	65.3	9.2	2010	35,538	97,886	9.37%	36.31%	79,740	9.61%	44.57%
	1.24%	VAP:	139,969	28.6	42.9	19.2	61.5	9.9	2008	57,254	100,676	8.62%	56.87%	84,566	9.53%	67.7%
148	2,005	Total:	169,642	15.6	7.9	75.4	82.4	1.9	2010	19,591	61,329	47.66%	31.94%	53,412	48.42%	36.68%
	1.20%	VAP:	119,705	19.8	7.7	70.9	78.0	2.2	2008	29,582	62,788	46.33%	47.11%	54,318	49.36%	54.46%
149	3,438	Total:	171,075	25.1	27.5	29.6	55.9	19.0	2010	29,046	77,421	14.11%	37.52%	64,031	14.16%	45.36%
	2.05%	VAP:	126,586	28.5	25.3	27.1	51.5	20.0	2008	45,680	77,335	13.17%	59.07%	65,362	14.37%	69.89%
150	3,677	Total:	171,314	59.7	11.3	22.3	33.1	7.2	2010	43,000	91,540	11.32%	46.97%	81,532	11.36%	52.74%
	2.19%	VAP:	120,116	63.6	10.0	19.6	29.4	7.0	2008	59,734	88,559	10.27%	67.45%	78,702	11.01%	75.9%

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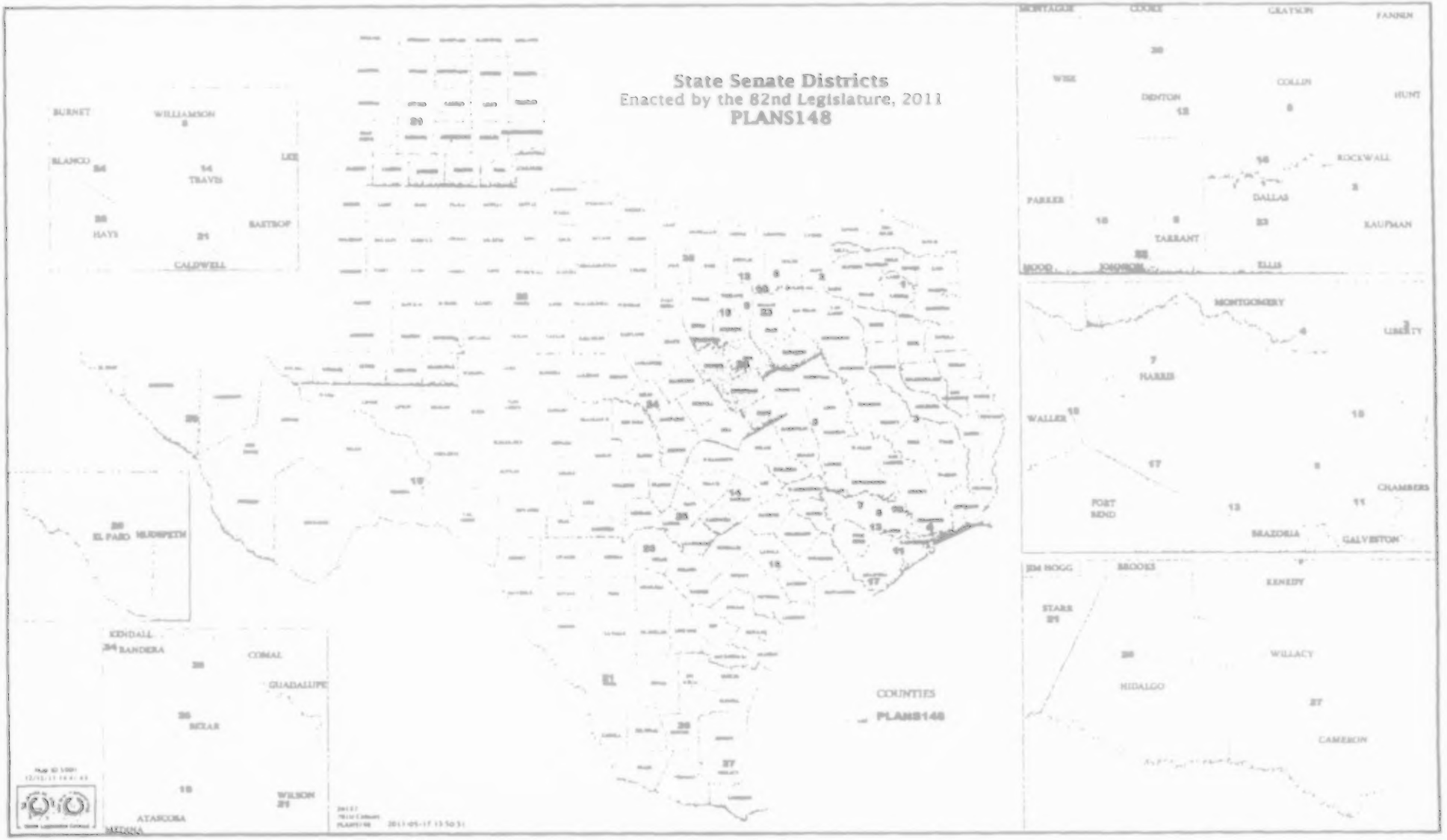
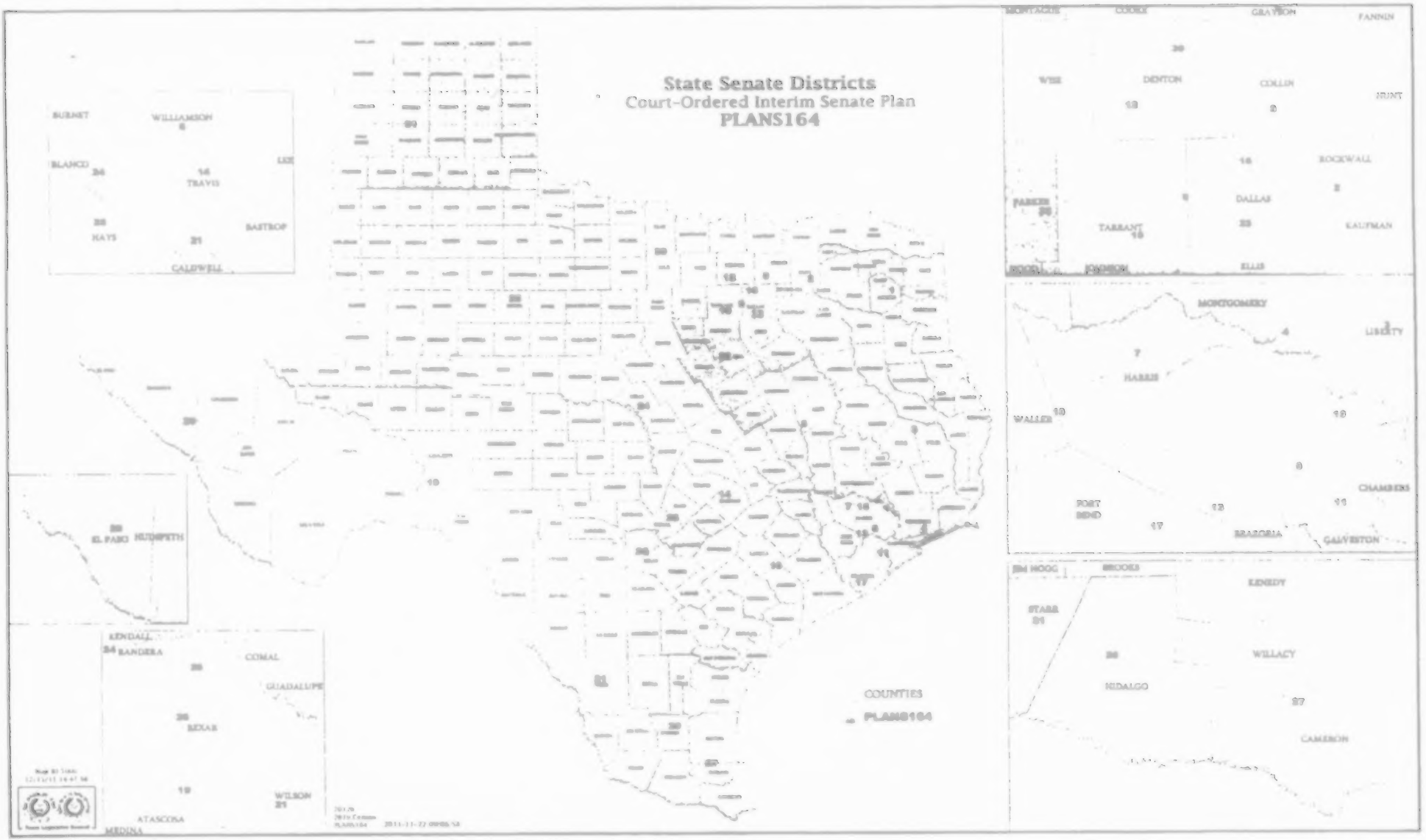
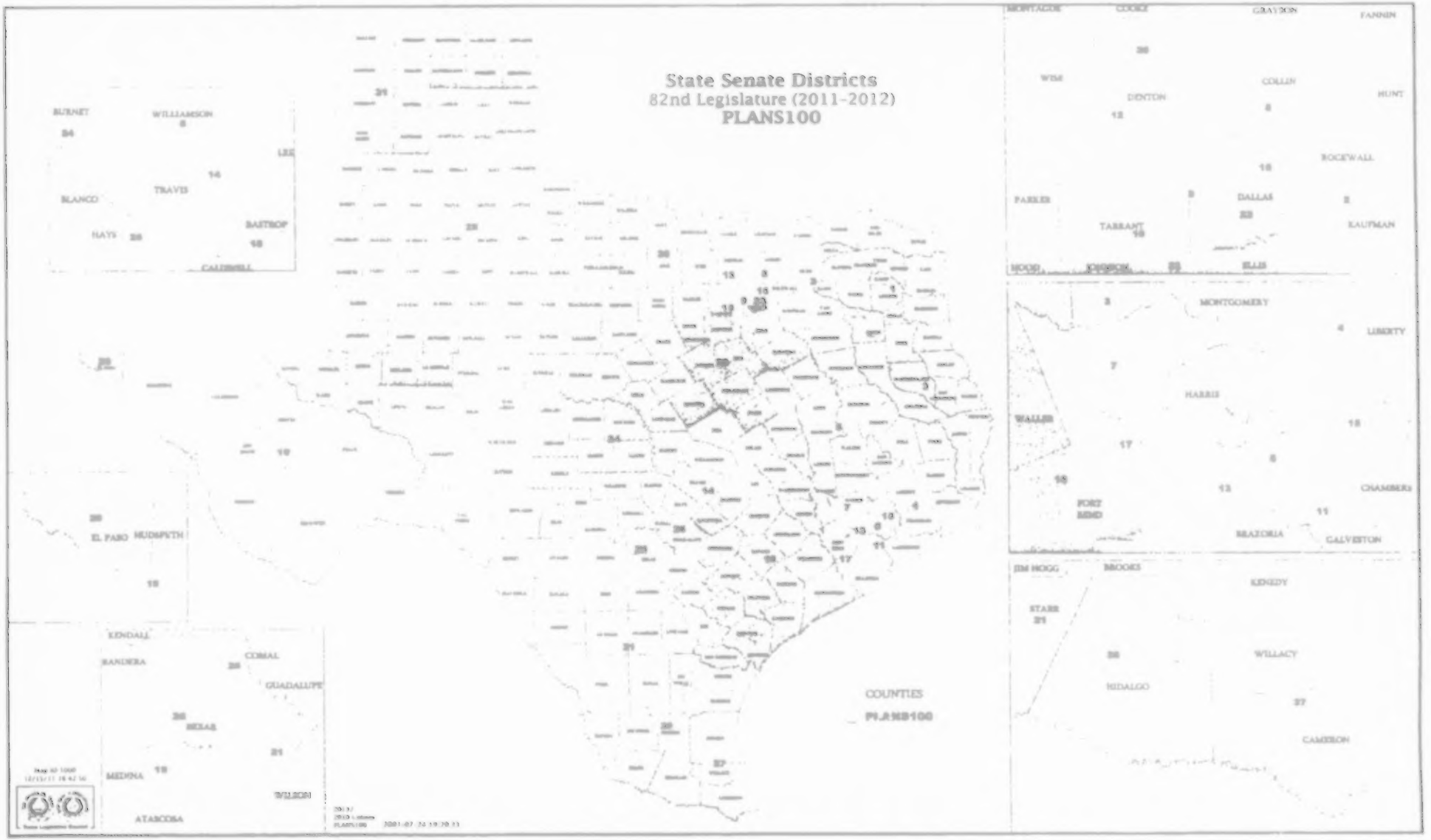
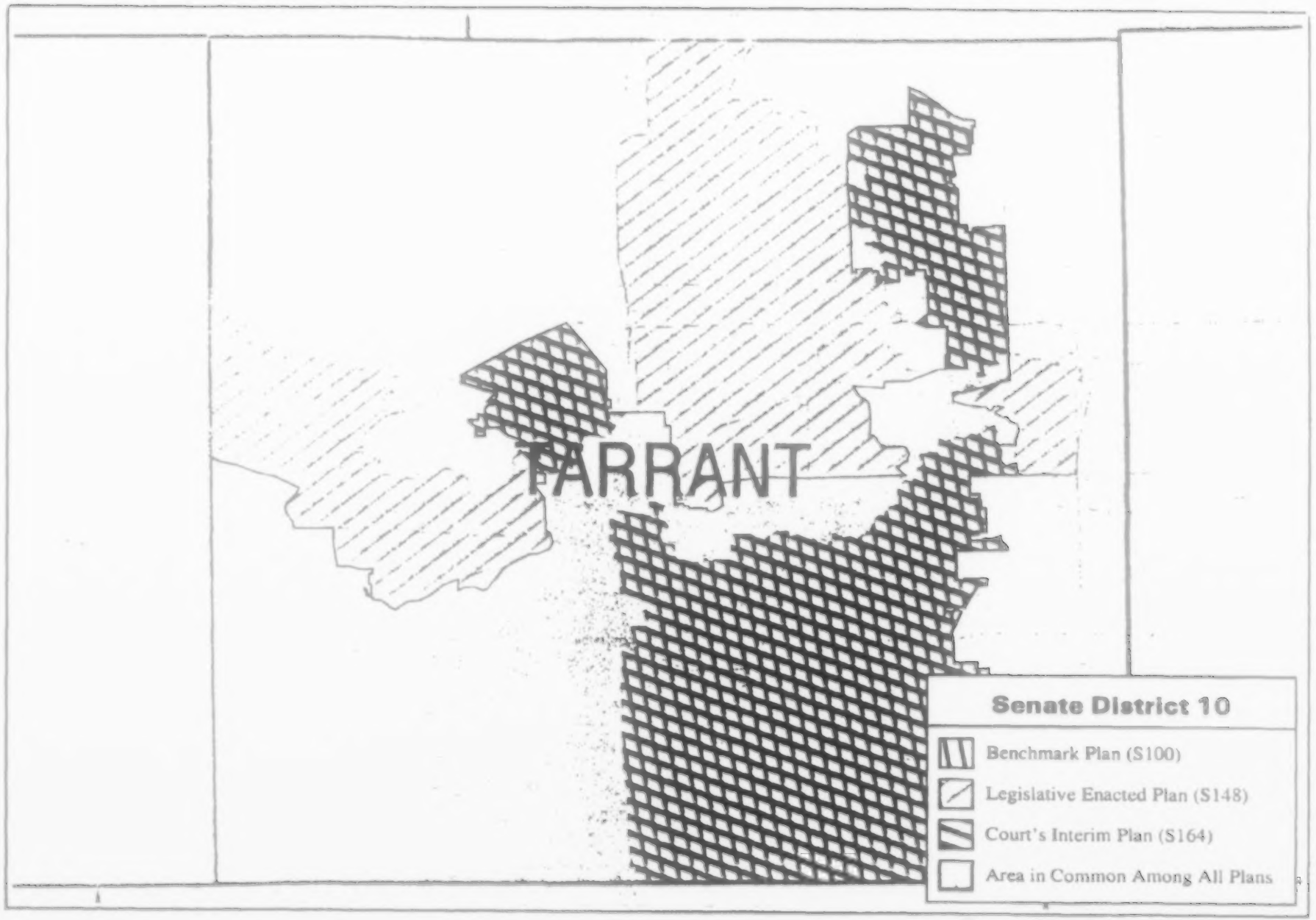

State Senate Districts
Enacted by the 82nd Legislature, 2011
PLANS148
COUNTIES
PLANS148
BURNET
WILLIAMSON
BLANCO
LEE
TRAVIS
HAYS
BASTROP
CALDWELL
MONTAGUE
COOKE
GRAYSON
FANNIN
WISE
DENTON
COLLIN
HUNT
ROCKWALL
PARKER
DALLAS
KAUFMAN
TARRANT
WOOD
JOHNSON
ELLIS
MONTGOMERY
LIBERTY
HARRIS
WALLER
CHAMBERS
FORT BEND
BRAZORIA
GALVESTON
JIM HOGG
BROOKS
KENEDY
STARR
WILLACY
HIDALGO
CAMERON
EL PASO
HUDSPETH
KENDALL
BANDERA
COMAL
GUADALUPE
BEXAR
WILSON
ATASCOSA
MEDINA

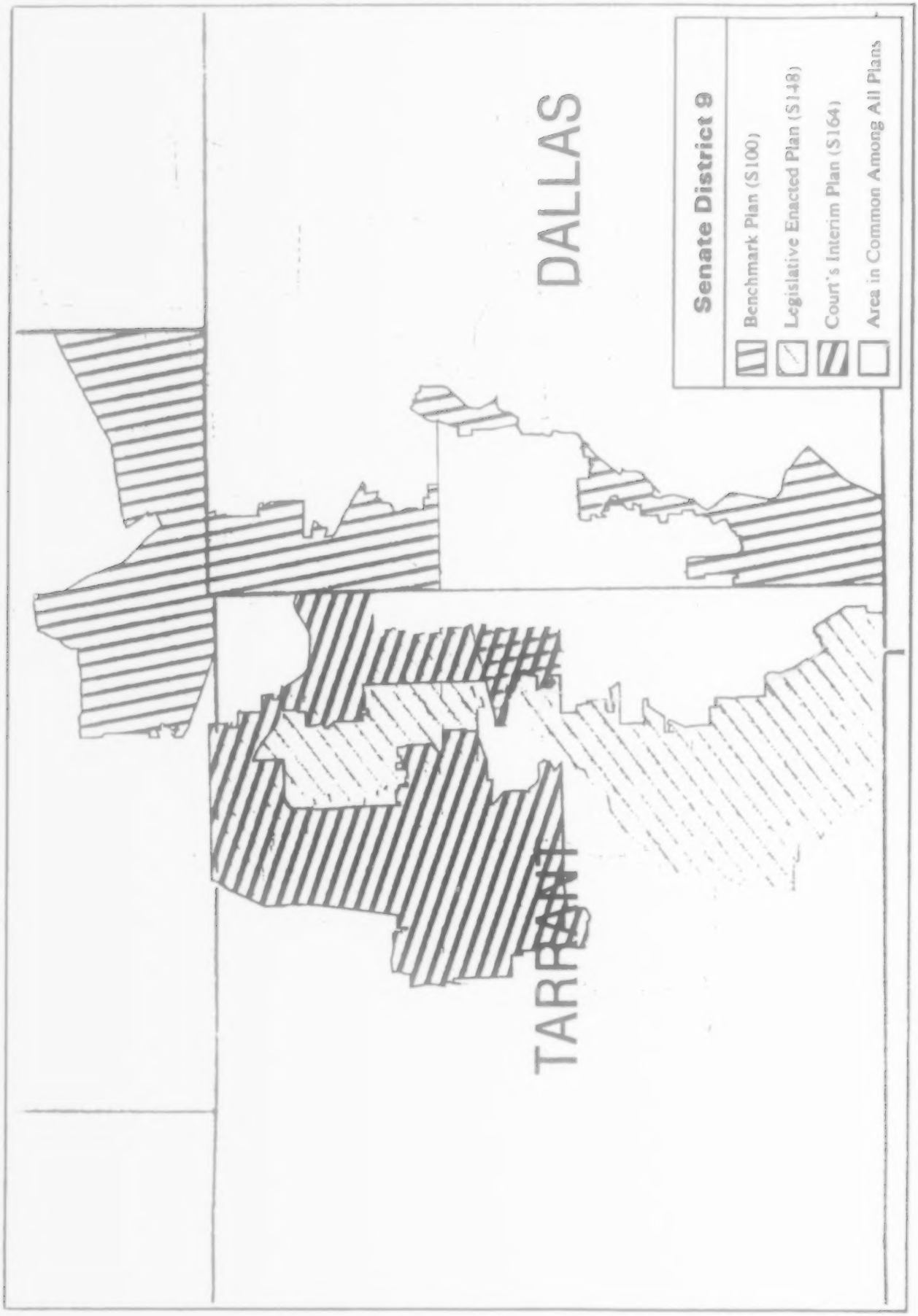
MJA 72

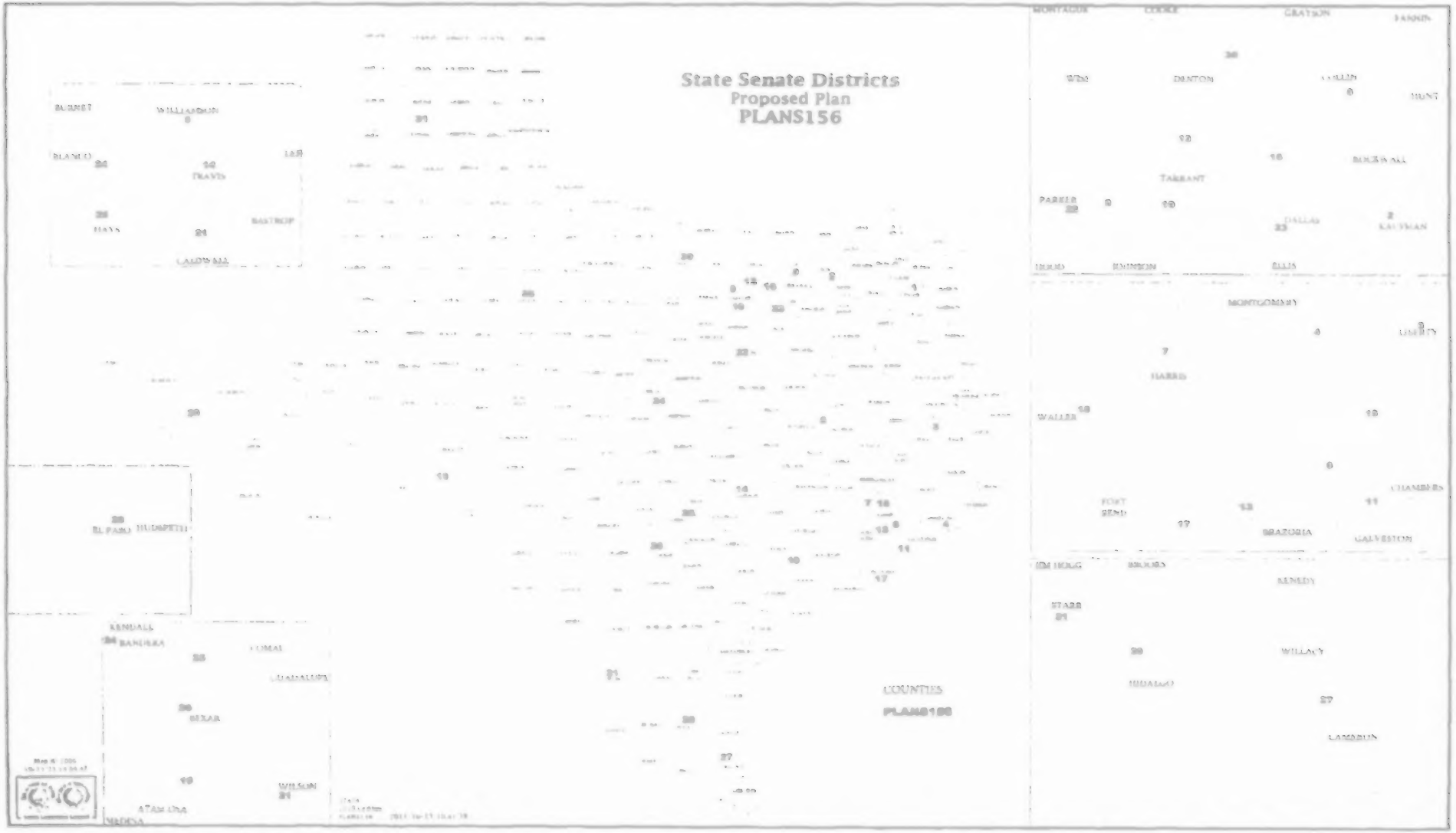

State Senate Districts
Court-Ordered Interim Senate Plan
PLANS164
COUNTIES
PLANS164
BURNET
WILLIAMSON
BLANCO
TRAVIS
HAYS
CALDWELL
BASTROP
EL PASO
HUDSPETH
KENDALL
BANDERA
COMAL
GUADALUPE
BEXAR
WILSON
ATASCOSA
MEDINA
MONTAGUE
COOKE
GRAYSON
FANNIN
WISE
DENTON
COLLIN
HUNT
ROCKWALL
PARKER
DALLAS
TARRANT
KAUFMAN
JOHNSON
ELLIS
MONTGOMERY
LIBERTY
HARRIS
WALLER
CHAMBERS
PORT ARTHUR
BRAZORIA
GALVESTON
JIM HOGG
BROOKS
KENEDY
STARR
WILLACY
HIDALGO
CAMERON


State Senate Districts
82nd Legislature (2011-2012)
PLANS100
COUNTIES
PLANS100
MONTAGUE
COOKE
GRAYSON
FANNIN
WISE
DENTON
COLLIN
HUNT
ROCKWALL
PARKER
TARRANT
DALLAS
KAUFMAN
HOOD
JOHNSON
ELLIS
MONTGOMERY
LIBERTY
HARRIS
WALLER
CHAMBERS
FORT BEND
BRAZORIA
GALVESTON
JIM HOGG
BROOKS
KENEDY
STARR
WILLACY
HIDALGO
CAMERON
BURNET
WILLIAMSON
LEE
TRAVIS
BLANCO
HAYS
BASTROP
CALDWELL
EL PASO
HUDSPETH
KENDALL
BANDERA
COMAL
GUADALUPE
MEDINA
ATASCOSA
WILSON

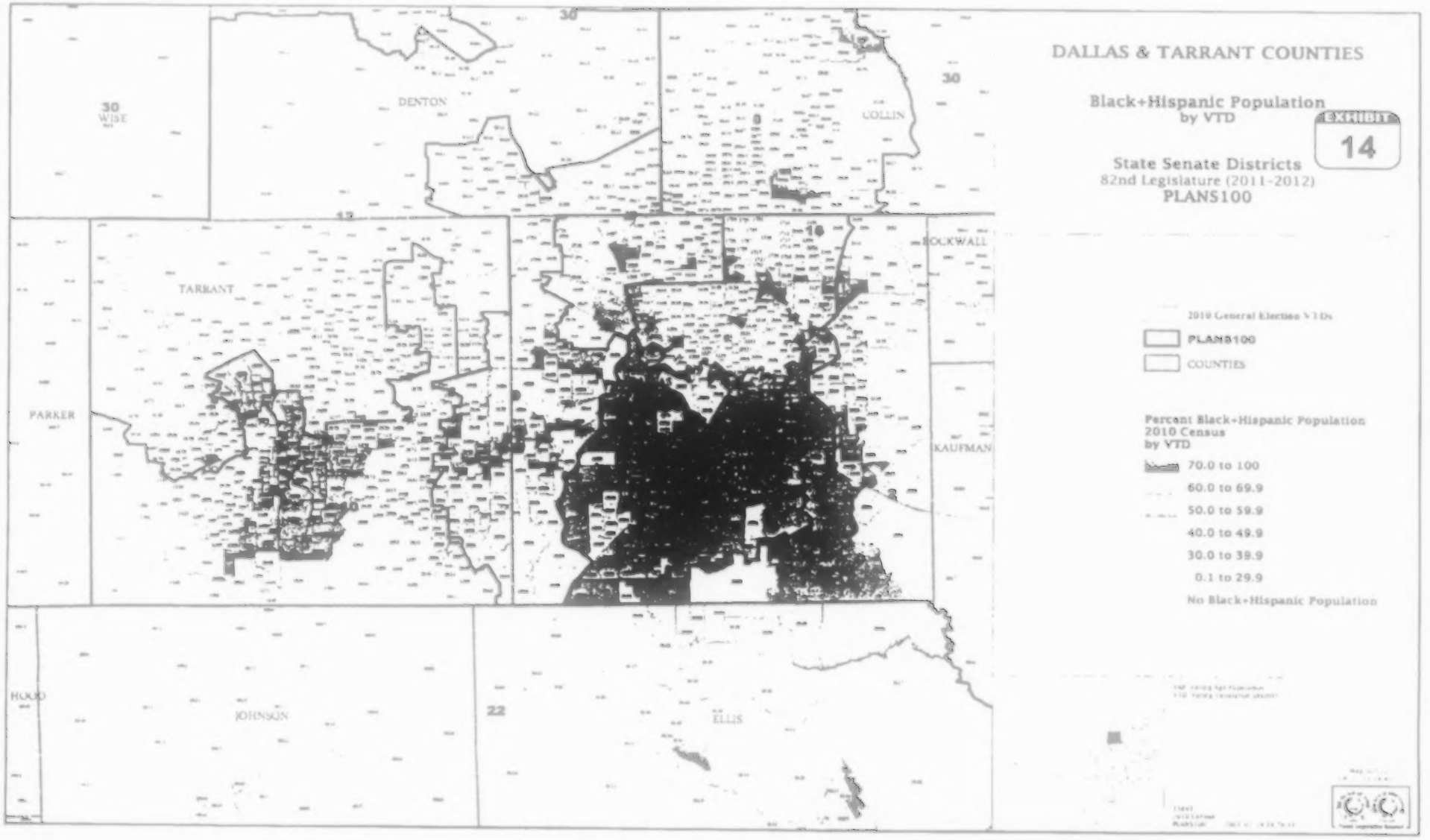
SAA 74


TARRANT
Senate District 10
Benchmark Plan (S100)
Legislative Enacted Plan (S148)
Court's Interim Plan (S164)
Area in Common Among All Plans

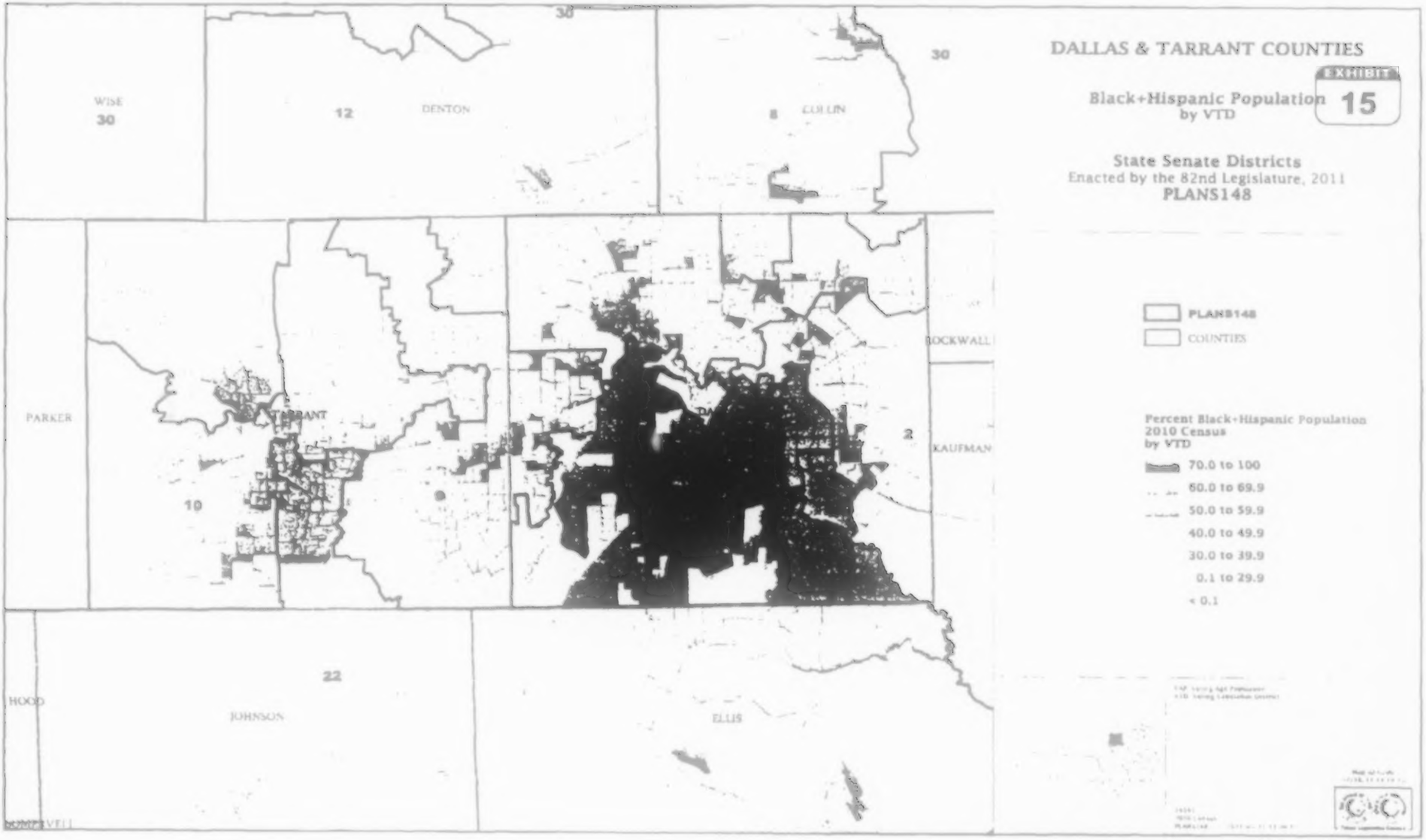

Senate District 9
Benchmark Plan (S100)
Legislative Enacted Plan (S148)
Court's Interim Plan (S164)
Area in Common Among All Plans
DALLAS
TARRANT


State Senate Districts
Proposed Plan
PLANS156
COUNTIES
PLANS156
MONTAGUE
COOKE
GRAYSON
FANNIN
DENTON
HUNT
TARRANT
PARKER
DALLAS
KAUFMAN
ROCKWALL
JOHNSON
ELLIS
MONTGOMERY
HARRIS
WALLER
CHAMBERS
FORT BEND
GALVESTON
BRAZORIA
KENNEDY
STARR
WILLACY
HIDALGO
CAMERON
BURNET
WILLIAMSON
TRAVIS
BASTROP
HAYS
CALDWELL
BLANCO
LEE
EL PASO
HUDSPETH
KENDALL
BANDERA
COMAL
GUADALUPE
BEXAR
WILSON
ATASCOSA
MEDINA

MLA 77


DALLAS & TARRANT COUNTIES
Black+Hispanic Population
by VTD
EXHIBIT
14
State Senate Districts
82nd Legislature (2011-2012)
PLANS100
30
WISE
DENTON
30
COLLIN
12
TARRANT
10
ROCKWALL
PARKER
KAUFMAN
HOOD
JOHNSON
22
ELLIS
2010 General Election VTDs
PLANS100
COUNTIES
Percent Black+Hispanic Population
2010 Census
by VTD
70.0 to 100
60.0 to 69.9
50.0 to 59.9
40.0 to 49.9
30.0 to 39.9
0.1 to 29.9
No Black+Hispanic Population

MAP 78


DALLAS & TARRANT COUNTIES
EXHIBIT
15
Black+Hispanic Population
by VTD
State Senate Districts
Enacted by the 82nd Legislature, 2011
PLANS148
PLANS148
COUNTIES
Percent Black+Hispanic Population
2010 Census
by VTD
70.0 to 100
60.0 to 69.9
50.0 to 59.9
40.0 to 49.9
30.0 to 39.9
0.1 to 29.9
< 0.1
WISE
30
12
DENTON
8
COLLIN
30
ROCKWALL
PARKER
TARRANT
10
2
KAUFMAN
22
HOOD
JOHNSON
ELLIS

MJA 79

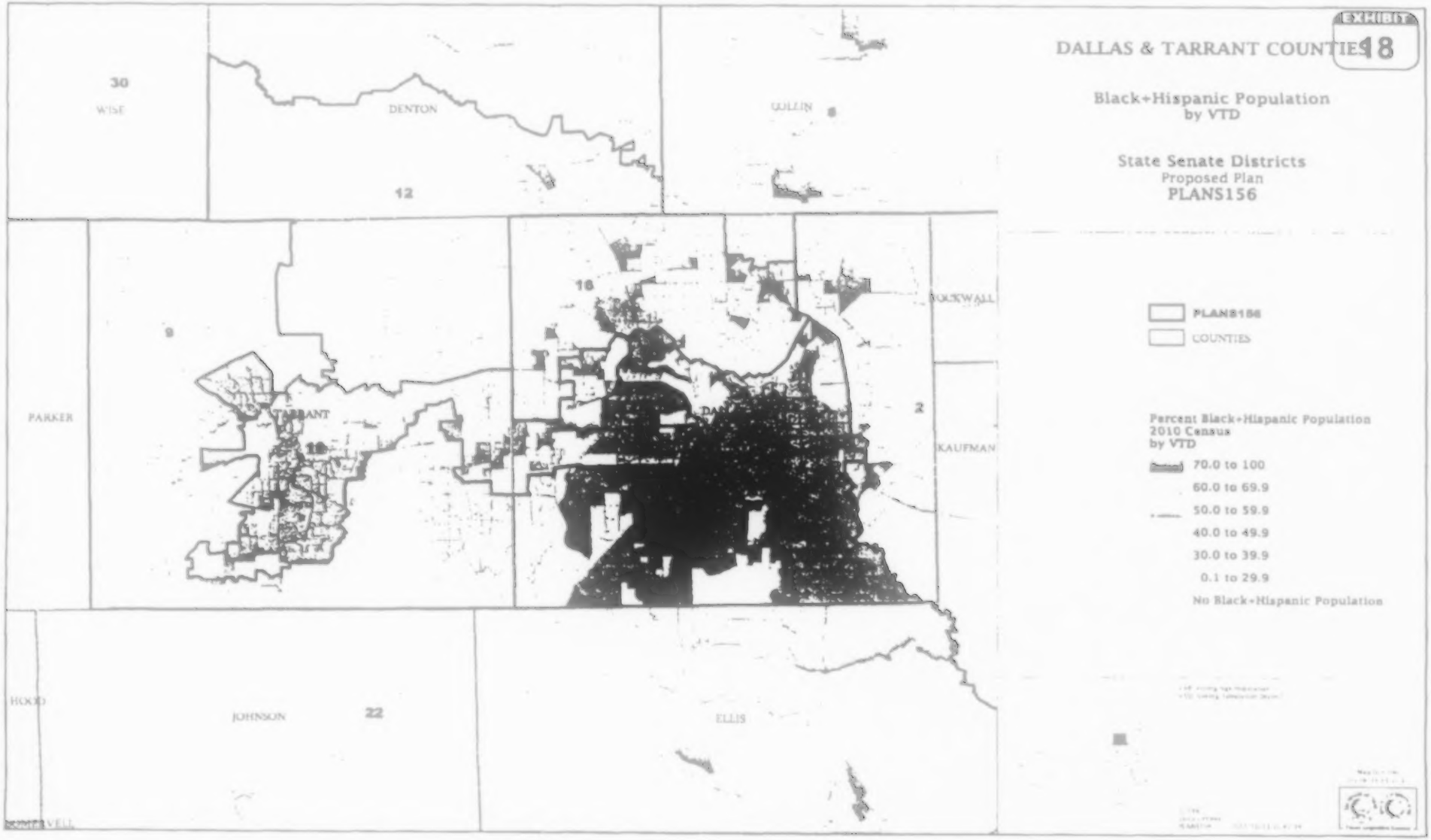
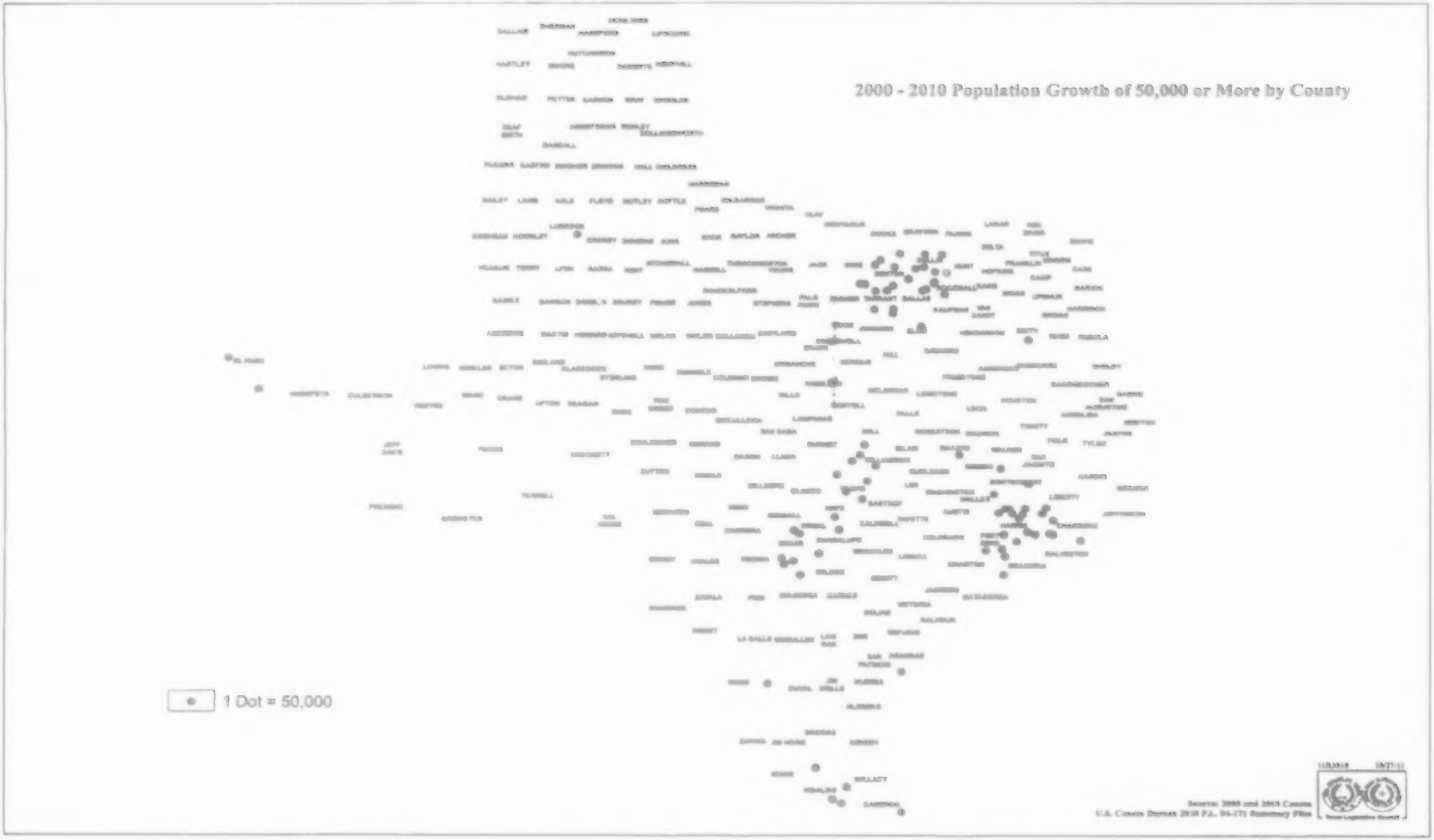


EXHIBIT 18
DALLAS & TARRANT COUNTIES
Black+Hispanic Population
by VTD
State Senate Districts
Proposed Plan
PLANS156
PLANS156
COUNTIES
Percent Black+Hispanic Population
2010 Census
by VTD
70.0 to 100
60.0 to 69.9
50.0 to 59.9
40.0 to 49.9
30.0 to 39.9
0.1 to 29.9
No Black+Hispanic Population
30
WISE
DENTON
12
COLLIN
8
9
PARKER
TARRANT
16
ROCKWALL
2
KAUFMAN
HOOD
JOHNSON
22
ELLIS


2000 - 2010 Population Growth of 50,000 or More by County
1 Dot = 50,000
Source: 2000 and 2010 Census
U.S. Census Bureau 2010 P.L. 94-171 Summary Files

SUPPLEMENTAL APPENDIX

NOS. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

On Appeal from the United States District Court for the Western District of Texas

SECOND SUPPLEMENTAL JOINT APPENDIX

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January 3, 2011 (Counsel continued on inside cover)

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11-713, 11-714, 11-715, Probable Jurisdiction Noted December 9, 2011

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UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
San Antonio Division

Civil Action No. 11-CV-360-OLG-JES-XR
[Lead Case]

SHANNON PEREZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

DATE FILED: 12/29/11
DOCUMENT NO. 571

SUPPLEMENTAL JOINT ADVISORY MEMORANDUM

Comes now, the Texas Conference of Urban Counties, the County Judges and Commissioners Association of Texas, and the Texas Association of Counties (collectively, "the County Organizations"), and file this Supplemental Joint Advisory Memorandum.

In response to the Court's order of December 22 for the parties to confer with the County Organizations regarding the Joint Advisory Memorandum filed by the County Organizations on December 22, counsel for the political parties requested a detailed explanation of the objections raised by the County Organizations. That detail was provided, with an explanation of the tasks required to be completed by county officials, the additional

time needed for each task not provided in the December 16 schedule requested by the parties and ordered by the Court, and an explanation of why the additional time was required. Additionally, the County Organizations explained the impact of compliance with the MOVE Act and pre-clearance under Section 5 of the Voting Rights Act on the schedule agreed to by the parties, and informed the parties that relief from such compliance would aid counties.

On December 26, 2011, several of the parties to this litigation participated in a conference call with the County Judges and Commissioners Association of Texas and the Texas Conference of Urban Counties. During the call the information provided to the parties in advance of the call was repeated by the County Organizations. However, the parties refused to suggest any schedule changes and insisted that the County Organizations provide a detailed schedule in the form issued by the Court on December 16.

The County Organizations have not previously suggested a detailed schedule as demanded by the parties because (1) the County Organizations are not advocating for any particular election dates, merely sufficient time in the adopted schedule for counties to physically be able to comply by conducting the elections; and (2) the County Organizations are not in a position to determine the effect of any proposed changes in election dates on the dates for political party activities or any other potential negative impact on the parties in the litigation.

As has been explained to the parties, the following amounts of time are required to conduct the following activities:

- After issuance of redistricting plans, 1 - 3 weeks are required to prepare election precinct boundaries for adoption by commissioners courts. This time includes ensuring that there is an available polling place for each precinct.
- After approval of election precinct boundaries by commissioners courts, 3 - 4 weeks are required to update voter registration information to be able to print voter certificates and ballots. While part of this delay is caused by the required DOJ pre-clearance, a minimum of two weeks is required due to the required manual entry of voter data into the voter registration system to account for the new precinct boundaries.
- After updating voter registration information, 2 - 3 weeks are required to print voter certificates and ballots. Once the precincts and candidates are set, counties generally need 10 days to 2 weeks for ballot generation, proofing, review by the political parties, and equipment testing before ballots can be printed and mailed. Counties that rely on a vendor to print their absentee ballots or program their voting equipment probably need 3 full weeks. There are relatively few printing vendors registered with the Secretary of State for the printing

of ballots, and that fact contributes to this time.

The maps finally issued by the Court will determine the actual amount of time needed by counties. If the final maps differ substantially from both the maps approved by the Texas Legislature and the maps previously ordered by the Court, then counties impacted by those differences will require more time than set forth above. For that reason, counties are requesting that any election schedule ordered by the Court at this time be contingent on final maps that are substantially similar to the maps approved by the Texas Legislature or the maps previously entered by the Court.

Further, the County Organizations have explained to the parties that, under the present schedule, counties cannot comply with the MOVE Act and mail overseas ballots on or before the 45th day before the primary and runoff elections. The 45th day before the April 3 primary is February 18, which is a mere 17 days after the last day the Court may issue maps under the December 16 order. The 45th day before the June 5 runoff is April 21, which is a mere 5 days after the drawing for ballot places by the political parties. There is simply no way counties can comply with the MOVE Act under the other dates in the Court's schedule. Any relief from compliance with the MOVE Act should not include the addition of days for the receipt and canvassing of overseas ballots. Such addition of days will push back other critical dates, and could ultimately have a devastating effect on municipal and school district elections. For this reason, the County Organizations are requesting relief from compliance with the

MOVE Act, and that no changes be made to the date for the receipt of overseas ballots to make up for the non-compliance.

Finally, the County Organizations believe a waiver of the requirements of section 5 of the Voting Rights Act will assist counties in meeting any schedule ordered by the court. Counties should not spend significant staff time and expense making changes to voter registration records and mailing voter registration certificates for election precincts that are ultimately rejected by the Department of Justice. Waiving the pre-clearance requirement for election precinct changes required to address redistricting maps entered by the Court would permit counties to move more quickly in making changes to voter registration records.

All of the times, caveats and requested relief communicated to the parties by the County Organizations are contained in the attached proposed Order for the Court's consideration. The County Organizations have not suggested any changes to dates applicable to political party activities.

If the Court were to adopt the proposed Order, it is the opinion of the County Organizations that counties in Texas could conduct the elections in compliance with it. However, the Court should know that many counties use the same vendors for ballot preparation, and the ability of vendors to comply with the time constraints is outside the control of the counties. In the event counties later learn that those vendors are unable to comply with the time

constraints in the proposed Order, the County Organizations will inform the Court.

Respectfully submitted,

/s/ John B. Dahill w/ permission
John B. Dahill, General Counsel

* * *

PROPOSED ORDER[1] BY COUNTY ORGANIZATIONS

The Court is entertaining various issues pertaining to redistricting of the United States House of Representatives, the Texas House of Representatives and the Texas State Senate. In order to provide the Court time to enter necessary orders, the following relief is hereby granted. The following schedule is contingent upon the Court entering redistricting plans for Texas House, Senate and Congress on or before February 1, 2012 that are substantially similar to either (1) the redistricting plans approved by the Texas Legislature; or (2) the redistricting plans previously entered by this Court. If the final redistricting plans differ substantially from both of those plans, even with regard to a single county, the Court will receive comments and make further orders as are necessary to address compliance issues with the following schedule by any party or county, if any.

Residency

Therefore, it is ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the

---

[1] This Order is submitted by the Texas Conference of Urban Counties, the Texas Association of Counties, and the County Judges and Commissioners Association of Texas (County Organizations) in response to the demand of the Parties that County Organizations submit a alternative election schedule. It has been reviewed by numerous county election officers including those in Dallas, Harris, Tarrant, Fort Bend and Bexar counties.

district the person seeks to represent from February 1, 2012 until the date of the General Election, and,

It is further ORDERED that an incorrect precinct, district or place designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before February 1, 2012 at 6 p.m. If a previously filed application indicated a district, precinct or place designation specifying a particular map to which that designation applied, or if the application did not specify a district, precinct, or place designation, and one is required for the office sought, the application shall be rejected if not amended to correct such designation prior to 6 p.m. February 1, 2012. Any petition submitted in lieu of filing fee must contain valid signatures of registered voters of the territory from which the office sought is elected in the number required by the Texas Election Code, and must be submitted to the appropriate filing authority no later than 6:00 p.m., February 1, 2012.

An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period.

Schedule for Reopened Filing Period and General Primary

The Court hereby adopts and orders this procedure with respect to the 2012 Primary Election for federal, state, county and local offices. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law:

a. Subsections (c)-(m) of this Court's Order of November 7, 2011 (Docs. 57 and 489) are vacated. Ballot drawings and delivery of candidate lists as provided for in that order are not required until after the close of the reopened filing period as set forth below.

b. The first day to file an application for a place on the Primary Ballot during the reopened filing period as described in Texas Election Code § 172.023(b) shall be at a future date to be determined by this Court.

c. An application for a place on the general primary election ballot during the reopened filing period must be filed not later than 6 p.m. on February 1, 2012 as described in Texas Election Code § 172.023(a). All amendments to previously filed applications with respect to office, precinct, place or any other material detail must be completed by this time. Candidates, and not filing authority election staff, may amend their applications by replacing the whole page of such application that requires changes. Each submitted page must contain the signature of the candidate and the date it was signed. Political parties who make their nominations by convention and do not hold a primary election may accept applications until 6:00 p.m., February 1, 2012. Applications filed with the incorrect authority are deemed to have been timely received by the correct authority if the authority who received the application was the correct authority at the time the application was originally filed. Applications

filed with the incorrect authority shall be forwarded to the correct authority without delay.

d. The last day a vacancy for an unexpired term in an office of the state or county government may occur and appear on the primary ballot, as described in Texas Election Code § 202.004(a), is January 27, 2012.

e. The deadline for the county chair (or secretary of the county executive committee) to post a notice on the bulletin board used for posting notices of the commissioners court's meetings, containing the address at which the county chair and secretary of the county executive committee will be available to receive applications on the last day for filing an application, as described in Texas Election Code § 172.022, is January 31, 2012.

f. If a candidate withdraws, dies or is declared ineligible by February 2, 2012, the name is omitted from the primary ballot as described Texas Election Code §§ 172.057 & 172.058.

g. The deadline for state chair to deliver certified list of statewide and multi-county district candidates to each county chair, as described in Texas Election Code § 172.028(b), is February 2, 2012.

h. Deadline for a write-in candidate for the office of county or precinct chair to file a declaration of write-in, as described in Texas Election Code § 171.0231(d), is February 1, 2012.

i. The deadline for the state or county chair, as applicable, to receive applications for a place on the general primary election ballot for an unexpired term for a vacancy in an office of the state or county government that occurs on or before January 27, 2012, as described in Texas Election Code § 202.004(b) is February 1, 2012.

j. The deadline for county executive committee to conduct drawing for candidate order on ballot at the county seat (unless committee provides by resolution that primary committee is to conduct drawing), as described in Texas Election Code § 172.082(c), is February 3, 2012.

k. The deadline the state chair shall deliver the chair's list to the secretary of state, and each county chair shall deliver a copy of the chair's list to the county clerk, the state chair, and the secretary of state as described in Texas Election Code § 172.029(c), is February 2, 2012.

l. If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes on or before February 20, 2012, notwithstanding Texas Election Code § 42.032. The requirements of Texas Election Code § 42.036 and the requirements of Section 5 of the Voting Rights Act are suspended for

an order of a commissioner's court adopted to comply with this section of this Court's Order.

m. The first day of the period for voter to submit an application for an early ballot by mail for the general primary, or for both the general primary and the runoff election, as described in Texas Election Code §§ 84.001(d), (e) & 84.007, shall be February 11, 2012.

n. On or before March 9, 2012, the registrar shall issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense list, as described in Texas Election Code § 14.001.

o. Notwithstanding the requirements of the MOVE Act, the early voting clerk shall mail general primary ballots to voters subject to the MOVE Act requirements on or before March 9, 2012.

p. Because of insufficient time between the mailing of voter registration certificates as described in Texas Election Code § 14.001 and the beginning of early voting, the registrar is required to comply with Texas Election Code §14.023 regarding the issuance of a confirmation notice in accordance with Texas Election Code § 15.051 on or before July 1, 2012.

q. **The 2012 General Primary Election shall be held on April 3, 2012.** All deadlines and dates specified as changed in this Order, or in

previously issued orders in this action shall be observed as provided for in the Texas Election Code.

r. The deadline for runoff primary candidates to withdraw from the runoff ballot, as described in Section 172.059, Election Code is 5 p.m. April 10, 2012.

s. The local canvass of the general primary for county and precinct offices by the county executive committee, as described in Texas Election Code §§ 172.116(b) and 172.084(b) shall occur on or before April 11, 2012.

t. The deadline for county chairs to submit canvassed returns for statewide and district offices to the state party chair as described in Texas Election Code §§ 67.007(d) and 172.119(b) is Noon, April 12, 2012.

u. The deadline for the state executive committees to conduct the canvass of statewide and district offices with potential runoffs, and certify these candidates to county chairs as described in Texas Election Code §§ 172.120 and 172.121, is 5 p.m., April 14, 2012.

v. The ballot drawing conducted by county executive committee for all offices on the primary runoff ballot, as described in Texas Election Code §§ 172.084(b) and (c) shall occur no later than 9 a.m., April 16, 2012.

w. The first day of the period for a voter to submit an application for an early ballot by mail for the runoff primary, as described in

Texas Election Code §§ 84.001(d), (e) & 84.007, shall be April 6, 2012.

x. County and Senatorial District Conventions, as described in Texas Election Code § 174.063, shall be held on either April 14 or April 21, 2012 as determined by the State Chair of each political party.

y. Notwithstanding the requirements of the MOVE Act, the early voting clerk shall mail runoff ballots to voters subject to the MOVE Act requirements on or before May 4, 2012.

z. **The 2012 General Primary Runoff Election shall be held on June 5, 2012.**

Therefore, it is ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order.

Nothing in this order shall be construed by the Court or the parties as a waiver of the positions of each party with respect to the schedule or conduct of the upcoming election. The parties' positions as stated at the December 13, 2011 hearing are expressly reserved. Additionally, the Republican and Democratic parties have agreed that is necessary to

have a primary early enough in April to allow them to conduct their statutorily required conventions as previously planned.

SIGNED this _____ day of _____, 2011.

_____

ORLANDO GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of:

JERRY E. SMITH
UNITED STATES CIRCUIT JUDGE
U.S. COURT OF APPEALS, FIFTH CIRCUIT

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
San Antonio Division

Civil Action No. 11-CV-360-OLG-JES-XR
[Lead Case]

SHANNON PEREZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

DATE FILED: 12/21/11
DOCUMENT NO. 565

SUPPLEMENTAL JOINT ADVISORY MEMORANDUM

Comes now, the Texas Conference of Urban Counties, the County Judges and Commissioners Association of Texas, and the Texas Association of Counties (collectively, "the County Organizations"), and respectfully request the Court to consider the following comments in issuing any orders impacting the 2012 primary elections in Texas.

The Texas Conference of Urban Counties is a non-profit corporation composed of 37 member counties, representing approximately 80% of the population of Texas. The Texas Association of Counties is a Texas non-profit corporation with 253 of the 254 Texas counties as members. The following associations are represented on the Board of Directors of TAC: the County Judges and

Commissioners Association of Texas; the North and East Texas Judges' and Commissioners' Association; the South Texas Judges' and Commissioners' Association; the West Texas Judges' and Commissioners' Association; the Texas District and County Attorneys' Association; the Sheriff's Association of Texas; the County and District Clerks' Association of Texas; the Texas Association of Tax Assessor-Collectors; the Texas County Treasurers' Association; the Justice of the Peace and Constables' Association of Texas; and the County Auditors' Association of Texas. The County Judges and Commissioners Association of Texas is a non-profit association of all 254 county commissioners courts, providing educational, legal and legislative services to the members of county commissioners courts. Each of the County Organizations serves its respective member counties through education endeavors and through representation before state and federal governmental entities.

The County Organizations approve of the planned unified primaries. Bifurcated primaries would result in increased costs to counties, and would create confusion among voters.

Despite agreement with the unified primaries, the County Organizations believe the Order issued in these consolidated cases on December 16, 2011 (hereinafter, "the Order") imposes on counties requirements that (1) are impossible to comply with, or that will be extremely difficult and expensive to comply with, if compliance is physically possible; and (2) may lead to voter confusion and disenfranchisement.

The comments contained in this Joint Advisory Memorandum are derived from conferences with election officials in the following Texas counties: Bell, Bexar, Brazoria, Collin, Dallas, Denton, Ector, El Paso, Fort Bend, Harris, Hays, Hunt, Lubbock, Midland, Nueces, Rockwall, San Patricio, Shelby, Tarrant, and Travis. These counties are representative of the 254 counties in Texas, with the smallest having a population of just over 25,400 (Shelby) and the largest (Harris) having a population over 4 million. The election officials in each of these counties have expressed serious reservations and concerns regarding their ability to comply with the Order.

Adoption of Revised Precinct Lines

The Order is contingent on the Court entering redistricting plans for Texas House, Senate and congressional races on or before February 1, 2012. However, in subsection l. of the Order the Court directs commissioners courts to adopt changes in election precinct boundaries necessary to give effect to a redistricting plan under the Texas Constitution no later January 31, 2012.

Assuming the Court enters redistricting plans on February 1, 2012, it would be impossible for county commissioners courts to comply with the Order with regard to the adoption of election precinct boundaries.

If the Court were to enter redistricting plans prior to February 1, 2012, it is the opinion of most of the elections administrators in our member counties that the revision of election precinct boundaries will take a minimum of 3 weeks to complete. Although

not cited in the Order, § 42.033, Texas Election Code, states a change in election precinct boundaries may not be effective earlier than the first day of the first even-numbered voting year following the voting year in which the change is ordered unless the voter registrar has sufficient time to correct the registration records before the effective date of the change. This provision of Texas law specifically recognizes that changes in precinct boundaries require time to correct registration records. Unfortunately, the Order does not recognize that required time.

This matter is further complicated in that, for some revised election precincts, a polling place must be identified for the primary, runoff, and regular elections. Commissioners courts will not approve voting precincts without first confirming that there is a suitable polling place for each precinct.

Finally, the Order does not mention the requirement that all changes to election precincts require preclearance by the Department of Justice pursuant to Section 5 of the Voting Rights Act before the changes may be given effect. The preclearance requirement will delay updates of voter registration systems, mailing of voter registration certificates, and preparation of ballots.

Updates of Voter Registration Systems

Once new county election precinct boundaries are adopted by county commissioners courts, elections administrators will require a minimum of 3 to 4 weeks to update their voter registration systems. GIS systems currently is use in counties often cannot make a large number of required

changes automatically, and those individual voter registrations will have to be updated manually. This problem, of course, is greatest in populous counties. The voter registration systems must be updated in order for correct voter registration certificates to be mailed (and in order to prepare ballots).

Despite the total of 6 to 7 weeks needed from the entry of redistricting plans until correct voter registration certificates can be prepared, the Order directs county voter registrars to mail voter registration certificates on or before February 13, 2012. That date could be just 12 days after the entry of redistricting plans. The date is simply not realistic if the Court expects the mailed voter registration certificates to be accurate as to any new or revised districts and voting precincts. Harris County alone is required to mail 1.9 million voter certificates, and an unknown number of those may need to be updated in order to contain accurate information. If voter registrars are required to mail inaccurate voter registration certificates in order to meet the deadline set by the Court, there is likely to be much confusion among voters. And voter confusion leads to voter disenfranchisement.

Preparation of Ballots and MOVE Act

As mentioned above, ballots cannot be accurately prepared until new and revised election precincts are entered into voter registration systems. This process will take a minimum of 6 to 7 weeks from the entry of redistricting orders. However, the Military and Overseas Voter Empowerment (MOVE) Act requires states to transmit validly-requested absentee ballots to U.S. Uniformed Services and

merchant marine, their family members and U.S. citizens residing outside the United States no later than 45 days before a federal election. The 45th day before the April 3, 2012 primary date set by the Order is Saturday, February 18, 2012. That date is a mere 17 days after the last date the Court may enter redistricting plans. This is simply not enough time for counties to analyze the redistricting plans, prepare necessary precinct boundary changes, have those precinct boundary changes adopted by commissioners courts, have the Department of Justice pre-clear the precinct boundary changes, update the voter registration systems, and print both voter registration certificates and ballots.

Preparation of Runoff Ballots

The Order sets June 5, 2012 as the date for the 2012 general primary runoff election. The Order also sets the date for county executive committees to conduct the ballot drawing for the primary runoff ballot on April 16, 2012. However, the MOVE Act requires that ballots be mailed to overseas voters no later than Saturday, April 21, 2012. Ballot preparation simply takes longer than 4 days; and many counties will find themselves at the mercy of their printing vendors.

Requested Action

The County Organizations respectfully request this Court to convene a hearing and take testimony from county election officials regarding the ability of those election officials to comply with the Order. At the conclusion of the hearing, the Court should issue such further orders as are necessary for counties to comply with the orders of the Court while also

avoiding violations of applicable law. Such orders may include orders that expedite implementation of election precinct boundaries, such as a limited waiver of Section 5 of the Voting Rights Act, and orders waiving strict compliance with the MOVE Act, and such additional orders as necessary to allow sufficient time to prepare and mail ballots for the general and runoff primaries.

Respectfully submitted,

/s/ John B. Dahill w/ permission
John B. Dahill, General Counsel

* * *

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
San Antonio Division

Civil Action No. 11-CV-360-OLG-JES-XR
[Lead Case]

SHANNON PEREZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants.

DATE FILED: 12/22/11
DOCUMENT NO. 567

CORRESPONDENCE TO THE COURT

Comes now, the Texas Municipal League (TML), and respectfully requests the Court to consider the following comments. TML is a non-profit association of over 1,100 incorporated cities that provides legislative, legal, and educational services to its members.

We write to you on behalf of our member cities to express a technical concern with the above-referenced lawsuit relating to election dates. *TML is completely neutral on and has no position concerning the merits of the redistricting maps approved by the Texas Legislature.* We simply wish to bring our election date issue to your attention, and offer any technical assistance, as you work to select appropriate election dates for the primary and primary run-off elections.

Our concern is that an order that results in certain new primary dates could affect our member cities' (and thousands of other local governments') ability to properly conduct their May elections on May 12, 2012, due to the inability to secure legally-required electronic voting machines.

Senate Bill 100, passed by the Eighty-Second Texas Legislature earlier this year, implements the federal Military and Overseas Voter Empowerment (MOVE) Act of 2009. The MOVE Act, among many other things, requires that ballots be transmitted to military and overseas voters 45 days prior to an election held in conjunction with a federal election to ensure that military and overseas voters will have ample time to return their ballots. 42 U.S.C. § 1973ff. Senate Bill 100 implemented the MOVE Act in Texas by moving the primary runoff date, which used to be held on the second Tuesday in April of even numbered years, to the fourth Tuesday in May. TEX. ELEC. CODE § 41.007(b).

The S.B. 100 primary runoff date means that the May uniform election date (the second Saturday in May that most of the state's over 1,200 cities use for their general elections) will fall between the primary and primary runoff dates in even numbered years. That caused concern for many cities (and other local governments) because state law requires that each polling place comply with federal laws relating to accessibility for certain individuals. TEX. ELEC. CODE § 61.012. Included in those accessibility laws is a provision implementing the federal Help America Vote Act of 2002 that requires – in all but the tiniest cities located in the tiniest counties – at least one electronic voting system in

each polling place for individuals with disabilities. 42 U.S.C. § 15481(a)(3); TEX. ELEC. CODE § 61.013.

While there are several ways that cities can obtain machines, the most common has been to partner with their respective counties to do so. Since S.B. 100 went into effect in September 2011, many county clerks and election administrators have agreed to contract with cities, school districts, and other local governments to provide electronic voting machines for the upcoming election. Those counties did so in spite of the fact that – under the bill – they needed to use their electronic voting machines on a potential primary runoff election on Tuesday, May 22, 2012, and the two-week early voting period preceding that date.

The ongoing redistricting issues have cast uncertainty not only on the state primary elections, but also on city elections (and any election that is scheduled for the May uniform election date). The vast majority of Texas cities will hold their elections on May 12, 2012. That date is 10 days before May 22, which was to be the primary run-off date under S.B. 100 (the run-off date was moved to June 5 under this court's order). That minimum 10-day "cushion" is vitally important to Texas cities. County election administrators manage many city elections, and most of TML's member cities have found that the 10-day cushion under S.B. 100 was a sufficient amount of time to convince their county election administrators to continue to assist the city with the May 12 election date, and/or to continue to provide voting machines.

Accordingly, TML would respectfully urge that, whatever date(s) this Court ultimately decides upon for either the primary election, the run-off election, or both, that the dates do not fall inside a 10-day window on either side of the May 12, 2012, city election date (i.e., not between May 3 and May 21, 2012, inclusive). This proposed cushion around the city date is not an absolute guarantee that cities and counties will be able to negotiate an agreement for election assistance, but it is a good start.

As you move forward, we ask that you consider the hundreds of local government elections that are scheduled on the May uniform election date. We stand ready to assist the Court with technical advice regarding possible alternative dates that would not harm Texas cities.

Once again, we are neutral on the outcome of the redistricting process. We only want to make this Court aware of the possible ramifications on local elections.

Respectfully submitted,

/s/ N. Bennett Sandlin
N. Bennett Sandlin, Executive Director

* * *

Excerpts from Trial Transcript, Vol. 4
***Perez v. Perry*, No. 11-CV-360 (W.D. Tex.)**
Sept. 9, 2011

* * *

BY MR. MATTAX:

Q. Could you tell us what C-125 is?

A. Yes. This is titled the Solomons-Seliger congressional and this was the first map that was publicly released.

Q. Did this map try to draw a district in north Texas?

A. It did.

Q. You mentioned that Lamar Smith had provided you a map. Does this map include the map proposed by Lamar Smith?

A. It includes some aspects of his proposal. North Texas is not one of them.

Q. Why was north Texas not included?

A. He attempted to draw a Hispanic majority, Democratic- leaning district in north Texas. In looking at both his version of the map and maps proposed by other groups, and trying to draw one myself, we weren't able to draw a district in north Texas that had an HCVAP above 50 percent.

Given that the House had 101 Republicans, there wasn't the will to put a Democrat-leaning district, a new one in north Texas, unless it was going to be mandatory to comply with the Voting Rights Act. Because we couldn't, among other reasons, that we couldn't draw a 50-percent HCVAP

district, we did not believe it was mandatory to draw one there.

JUDGE RODRIGUEZ: Could you explain why you couldn't draw one?

THE WITNESS: Sure. The Hispanic population in Dallas-Fort Worth, it did grow, but I think it grew in areas that weren't necessarily concentrated. So an area might have grown from zero-percent Hispanic to 25-percent Hispanic, but you couldn't take those areas and create a majority Hispanic district.

Also, the DFW metroplex has a lot of noncitizen Hispanics. I think if you look at -- the overall percentage of Hispanics in DFW is relatively high, but I think if you look at the Hispanic citizen voting age population, I think it is around 18 percent. You also have a lot of Hispanics who are under 18 in that region.

JUDGE RODRIGUEZ: So what was the fallacy in Congressman Smith's drawing? Did he not take HCVAP into consideration, or what was the mistake he allegedly made?

THE WITNESS: I don't know that he made any mistake in it. I don't think his district was a required district. It may have been a permissible district, but there wasn't the legislative will to pass that district, unless it was a required district.

JUDGE RODRIGUEZ: So maybe I was under a misunderstanding. I thought Congressman Smith was under the impression he had created a district that was able to get that 50-plus percentage in.

THE WITNESS: I don't -- I don't think so. I am not sure. I didn't have a conversation with him about

it, but that district wasn't 50 percent. I think he just created a district that was as Hispanic as he could in that region.

JUDGE RODRIGUEZ: I'm sorry, Counsel.

MR. MATTAX: That's fine.

BY MR. MATTAX:

Q. You mentioned other groups trying to draw maps as well that you couldn't accomplish achieving a 50-percent Hispanic citizen voting age --

THE REPORTER: Counsel --

MR. MATTAX: I'm sorry. I just realized I was speaking too fash. Let me try to slow down.

BY MR. MATTAX:

Q. You indicated that other groups had tried to draw a map in northern Texas with a greater than 50-percent HCVAP and were unable to do so; is that correct?

A. That is correct.

Q. Could you tell us who some of those groups were?

A. MALDEF, MALC. I believe Representative Veasey tried to draw one. I know there are others. I looked at a bunch of maps that attempted to draw a north Texas Hispanic district, and I tried to draw one myself, and none of those maps were able to reach that 50-percent threshold, even going down to the block level, not just precincts.

Q. Thank you. Let me direct your attention, and maybe you can blow up the Dallas-Tarrant County area. We are going to focus on District 26.

Now, in District 26, you can see this -- let's call it an arm, or you can use whatever term you like, protruding south into District 12.

A. Yes.

Q. Was this a feature that you came up with?

A. No. There was -- in C-100, our baseline plan, there is an arm that comes down from District 26 into Tarrant County. This is a variation on that.

Q. So what variations were made from C-100 to this arm and why? Well, let's just start with what changes, and then we will go to why.

A. Okay. The arm changed location a little bit. In C-100, it came down through this area. There is a city here -- let me put it up. So you see North Richland Hills and Haltom City and Keller.

Congresswoman Granger in District 12 had asked for North Richland Hills to be included in her district. To accommodate that request, we would shift the arm left a little bit. And this, I don't remember the name of this little city, but we kept it whole, and then we were trying to balance the Republican nature, for lack of a better word, up in north Texas districts.

Denton County is a very Republican area. And so in doing that balancing, we needed to find Democrats -- not find Democrats, but we needed to include some democratic areas within District 26 to help balance District 26 and District 12, from a

political perspective. So this area down here, I think, was already included in District 26, because the old line came down this way, so we kept that in, and we added this area here. And I believe all of these areas are fairly democratic in nature.

Q. Now, you testified you were trying to balance political Democrats versus Republicans. When you first drew this map, did you have the shading for political races turned on to make that determination?

A. Yes. I would have looked at various political races on the congressional map. The focus was on the John McCain- Barack Obama race. You can shade the map -- this doesn't have the feature, but in Red Appl, you can shade the map by precinct, and the darker the red, the more Republican the district. The darker the blue, the more Democratic the district, based on any individual race that you chose to look at.

Q. So when you were making this initial change to District 26, and you had the political shading on, is there also an ability to have an ethnicity shading on?

A. There is.

Q. Did you have that on when you were drawing this?

A. Not at that time, no.

Q. This map that we have been discussing, C-125, was not the final map, was it?

A. No, it was not.

Q. Why don't we pull up C-136, which I believe was the map that reported out of committee.

Can you describe what C-136 is? And this is next in sequence in 52.

A. C-136 is the plan that the Senate passed out of the Senate committee. And in north Texas, it was identical to the original map. On the display, the red lines represent the new map, as we are moving forward. If there is a discrepancy, you will see the black lines from the old map as well. In this case, this region had no changes.

Q. And was this the plan that was finally adopted?

A. It was not.

Q. Would you please pull up map C-144? This is next in the sequence in 52. Could you zoom out? Okay. Before you do that, perhaps we should keep it there, because maybe we need to talk about Dallas.

What was C-144?

A. C-144 was Representative Solomons' proposal to the House committee after the Senate passed their version of the map.

Q. And could you briefly describe what the changes are between the Solomons plan and the Senate plan?

A. Yes. In reviewing the plan that we initially put forward and that the Senate passed for this region, people made us aware that we had split the Hispanic community in Tarrant County, that there is a north Fort Worth Hispanic community here and

also a south Fort Worth Hispanic community here, and we had put them in different districts.

Once we became aware of that, we decided to make a change to try to put them in the same district. So it is hard to tell from the overlays, so I am going to switch to just the new version.

JUDGE RODRIGUEZ: Well, at what point did you turn on the race feature again or the ethnicity feature? Because you did 136, and that gets passed by the Senate, so now we are looking at the House consideration.

At any point, did you turn the ethnicity or race feature on to see whether or not you would be in compliance with the Voting Rights Act?

THE WITNESS: Yes.

JUDGE RODRIGUEZ: And at what point did you turn the feature back on?

THE WITNESS: Well, as far as the feature, we were always -- we were conscious of the numbers, and so we would look at them throughout the process before moving forward with the map. When we initially put the first map out, our analysis wasn't complete.

We were under some fairly intense time deadlines. The regular session either was about to end or had just ended and the special session had been called, and we knew that we had a very short window to get it passed, so we wanted to get a map out publicly, knowing that at that point we would get more comments and make more changes, so some things slipped through the cracks initially.

In north Texas, we had looked at drawing that Hispanic district, so we used Hispanic shading to try to figure that out. Once we weren't able to do that, then it was back to the political function of how to balance the districts.

And we didn't -- honestly didn't think about ethnic shading at that point, because it was a political decision. After that map was released and we started -- we got some comments saying, "Hey, you split the Hispanic population," then we pulled up the shading and saw, yes, they are right. We did split the Hispanic population. Can we put it back together? And so that is what we did with 144.

BY MR. MATTAX:

Q. And just to go a little out of sequence, this is a general proposition. Before any map is finally proposed, with respect to those areas of the state that had districts protected by the Voting Rights Act, there were checks done to see if there had been a reduction in, for example, citizen voting age population in those districts, things of that nature?

A. Yes. We tried to make sure we were maintaining levels of HCVAP in the Hispanic districts and black voting age population in the black districts.

Q. And --

JUDGE SMITH: Back to your earlier testimony, I just want to be sure, I think I understand, but when you were initially doing the balancing, you said to put more Democratic voters into 26.

At that time, you weren't looking at racial or ethnic makeup, but only at, what, the presidential results?

THE WITNESS: We also looked at --

JUDGE SMITH: Is that right or --

THE WITNESS: Yes. We also looked at other races. just presidential, but a lot of the Congressmen that they felt the key metric was that Obama-McCain

So they wanted to know, they all wanted to be above 50 percent in John McCain vote in their district.

JUDGE SMITH: All right. But it was the political balance by Republican, Democrat, not, at that point, anything racial?

THE WITNESS: That is correct. So in making this change, and I can't do the racial shading, but we took out this area essentially and replaced it with this area. And that -- that was in response to the comment that we had split that Hispanic population.

Now, it got a little more complicated, because this area in here is the Trinity River Project in downtown Fort Worth. There aren't many people that live in there, but there is a river that winds its way through, and Congresswoman Granger felt it was very important to keep that project, as much of it as possible, within her district, so we tried to draw the line in a way that left as much of the Trinity River Project in her neighborhood.

This area has very few people in it, but it does create a very strange shape. This area down here is

somewhat similar to the State House district, District 90 in Tarrant County. And then there were further changes. That is everything on this map.

BY MR. MATTAX:

Q. Why don't you expand that, and let's focus on District 35. Now, you testified earlier that in looking at the growth, where the growth was in the state, that there was sufficient growth in central Texas that a new district would have to be drawn; is that correct?

A. Yes.

Q. And is this an attempt to create a new district in central Texas?

A. Yes, it is.

* * *

A. The other goal was to create a new district anchored in Cameron County. The old District 27 kind of had twin anchors, Cameron and Nueces, but both the current congressman and I believe the one before that, who had been there a long time, were from Nueces County. So it was my understanding that the representatives and senators in Texas from Cameron County wanted a district that was anchored in Cameron where Cameron would elect their candidate of choice.

So our dual goals with 27 and 34 were to create that district, anchor it in Cameron--that was controlled by Cameron, not Nueces--and also to create a district for Congressman Farenthold who lived in Nueces where he would be elected as a Republican.

Q. And those senators and representatives who wanted to create a district anchored in Cameron County, were they Democrat?

A. Yeah. Senator Lucio -- Representative Lucio and Representative Oliveira, and they're all Democrats.

* * *

Excerpts from Trial Transcript, Vol. 6
***Perez v. Perry*, No. 11-CV-360 (W.D. Tex.)**
Sept. 12, 2011

* * *

Q. With respect to Representative Farrar's district, which I believe is 148, I believe that the SSVR was increased in that district?

A. Yes. For her district the SSVR was below 50 percent in the current and H 100. During the hearings both MALDEF and Vice Chairman Villarreal requested that 148 as well as District 90 in Tarrant County be taken above 50 percent SSVR. And so an effort was done to do that.

Q. And again for the record what are the party affiliations?

A. I'm sorry. Representative Villarreal was the vice chairman who is a Democrat.

Q. So it would be fair to say that that district was increased in SSVR at the request of the Democrats?

A. At the request of the Democrats as well as MALDEF.

* * *

A. I may have stated that. I will clarify that I think Nueces County was one of the areas where we actually did look at creating two entirely within Nueces County and we concluded that you couldn't do it because the SSVR was 49.5 percent, I believe, for the county as a whole.

* * *

A. I did not. Nueces County was put in that district based on specific testimony that was given at the Nueces County redistricting hearing where they requested to be in a district going north.

Q. Or did they request to be in the base of the district?

A. To be the anchor of a district, but I think -- if I recall correctly, I think they did request being separated from the southern portions.

* * *

Excerpts from Trial Transcript, Vol. 9
***Perez v. Perry*, No. 11-CV-360 (W.D. Tex.)**
Sept. 15, 2011

* * *

MR. GARZA: It did not go into San Patricio. It created two Latino majority districts entirely within Nueces County and then took the Anglo district north. That's the one that divided Galveston County, that Mr. Interiano was – had focused on.

* * *

DECLARATION OF DOUGLAS DAVIS
Texas v. United States, No. 11-CV-1303 (D.D.C.)

My name is Doug Davis. I am over the age of 18, of sound mind, and fully competent to make this declaration. I have personal knowledge of the facts stated herein, and they are true and correct.

1. I work for the Texas Senate. During the recently completed 82nd legislative session, I served as Director of and Counsel to the Senate Select Committee on Redistricting and Chairman Kel Seliger. My primary responsibility during the session was the drafting and analyzing of proposed maps for the Texas Senate.

2. Although Census data did not become available until February 17, 2011, the Senate Select Committee on Redistricting began the process of soliciting input on the Texas Senate map in the Fall of 2010. These efforts involved holding public hearings across the State in the cities of Austin. Dallas, Amarillo, Midland, Edinburg, San Antonio, and Houston. From the Fall of 2010 through May 2011, Chairman Seliger and I also solicited input from incumbent Texas Senators regarding preferences for their districts. Texas Senator Wendy Davis of Senate District 10 offered input in both public hearings and in private meetings. On September 20, 2010, Senator Davis's district director offered testimony at the Dallas public hearing. There she asked that the cities of Fort Worth and Arlington be treated with respect. She also asked that District 10 stay within Tarrant County.

3. After the Census data became available on February 17, 2011, the Lieutenant Governor asked

Chairman Seliger to delay moving redistricting legislation through the legislative process until the Legislature passed a budget. The Senate passed a budget on Thursday May 5, 2011. Consistent with the Lieutenant Governor's instructions, we waited until May 12, 2011 before bringing a proposed map before the Senate Select Committee on Redistricting. Prior to the May 12, 2011 hearing, Chairman Seliger and/or I privately met with most every Senator to discuss the districts of the individual Senators. These private meetings included a meeting in March 2011 with Senator Davis and another meeting on May 6, 2011. In those meetings, Senator Davis offered her position on District 10, including sharing two proposed maps of the district. From May 5, 2011 through May 11, 2011, Chairman Seliger and I met with and showed 30 of the 31 Senators a map of their proposed districts.

4. Although we were able to accommodate some of Senator Davis's requests, such as keeping District 10 within Tarrant County, we could not accommodate all of her requests in the proposed map. Senator Davis, nevertheless, was consummately engaged in the redistricting process. At the May 12, 2011 Senate Select Committee on Redistricting hearing, Senator Davis offered testimony. At the May 13, 2011 Senate Select Committee on Redistricting hearing, Senator Zaffirini offered Senator Davis's two District 10 proposals on Senator Davis's behalf. The Committee rejected these amendments. The Senate later rejected similar amendments on the floor. In violation of House and Senate protocol, Representatives Veasey and Alonzo reurged Senator

Davis's amendments in the House of Representatives. Again these amendments failed to garner the support of a majority. Ultimately, Plan S 148 passed the Texas Senate by a vote of 29-2. It also passed the Texas House by a vote of 96-47.

5. The public also had access to the Legislature during the legislative process leading up to passage of Plan 148. In addition to the seven hearings held in the Fall of 2010, the Senate Select Committee on Redistricting held two public hearings during session on Senate Bill 31 (which would later become Plan S 148). Nineteen members of the public from Tarrant County testified or registered a position on SB 31. Attached as Exhibit A is a true and correct copy of the witness list for the May 12, 2011 Senate Select Committee on Redistricting hearing.

6. From Fall 2010 through the passage of Plan S148 on May 21, 2011, Chairman Seliger and I maintained an open-door policy with Senators. We agreed to meet with any Senator that requested a meeting. We also spoke informally with every Senator, including Senator Davis and those representing minority districts. I personally visited in detail with Senators Zaffirini (District 21) and West (District 23). Senator Davis unquestionably availed herself of the legislative process leading up to passage of Plan S148 more than any other Senator.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 31st day of October, 2011.

Douglas C. Davis

Excerpts from Oral Deposition Transcript of Douglas Davis, Oct. 18, 2011
***Texas v. United States*, No. 11-CV-1303 (D.D.C.)**

* * *

Q. Why do you think it may have come up?

A. Well, I'll – if you'll let me answer, I'll go ahead.

One of the reasons, one of the things that was going on in Bexar County is what we talked about before, downtown San Antonio as being the base of a new district, new Latino opportunity district that ran to Travis County. Now, although Congressman Doggett's House was not in that district, there may have been discussion about whether Congressman Doggett may try to run in the 35th District. I don't recall whether there was, but there may have been.

Q. Well, you said "there may have been." What causes you to think there may have been?

A. I just explained to you why, because they may have been opining about whether he would move his choice of districts that he would file in since they don't have to live in their district. They may or we may have talked about whether he would run in a district that has some component of Travis County that is more Democrat, and so it may have come up.

Q. Okay.

A. That's why I said "may." I don't recall that it did, but it may have.

Q. I guess I'm struggling with the conversation that may have occurred versus one that did occur. I mean, by saying "it may have occurred," you're

suggestion that perhaps it did. Do you have any memory of the discussion at that meeting where Congressman Doggett was specifically mentioned?

A. I have no memory. But if other people testified that it did, I would not dispute it because it may have happened.

Q. Did you have any discussion with them about making it more difficult for Congressman Doggett to win reelection?

A. Did ever in the process Congressman Doggett's electability come up?

Q. Yes.

A. Yes.

Q. When?

A. The entire process.

Q. Who did you discuss that with?

A. Any and everybody who wanted to talk about it.

Q. Okay. And it's pretty hard to characterize many conversations, but what was the general tenor of the conversations you had about that issue?

A. If there was a way to draw a Republican district in Central Texas that would decrease his ability or his chances of getting elected, the * * *

Excerpts from Oral Deposition Transcript of Gerardo Interiano, Oct. 20, 2011
***Texas v. United States*, No. 11-CV-01393 (D.D.C.)**

* * * the pieces together as those started coming in. And where there was conflict, to work with the members to figure out if there was a way that they could come to an agreement. And if it couldn't come to an agreement, at that point I'd go to the chairman, and in some cases to the speaker.

Q. I think I just heard you say that the chairman wanted representatives to work together to draw maps?

A. Yes.

Q. Do you mean that he wanted the Republicans to work together and the Democrats to work separately?

A. No. He wanted everybody to work together. He wanted delegations to work together, and he – you know, he wanted -- again the numbers to drive this process.

Q. Is that an instruction that was communicated to anyone other than you?

A. It was on the house floor.

Q. And so if a delegation from a particular area or county did not work together, that would not be in keeping with the chairman's instructions, right?

A. The chairman asked the members to work together, and in some case the delegations couldn't So, I mean, we couldn't expect for everybody to agree as a necessary part of the process there were pairings. There were a total of seven pairings in the

map, and I can't imagine that the members that were paired were going to be happy and willing to work together. So, no, in some cases delegations couldn't work together.

Q. Well, I want to make sure I understand this concept of working together. You don't mean that by working together that delegations had to agree, right?

A. In some cases they did. I mean, the ideal situation was for a delegation to submit a plan, for example, I'll give you the example of Bexar County where I was very involved. I worked with all 10 members of the delegation, 10 members worked together, they talked to each other, they talked about what precincts they wanted, what precincts -- you know, they were figuring out how their districts fit together, and in the end 9 of the 10 members agreed on the map.

Q. And that was a process where Republicans and Democrats worked together?

A. Correct.

Q. Okay.

A. In fact, it's seven Democrats and three Republicans.

Q. But they didn't ultimately agree on a map but they worked together?

A. No, they agreed on a map for Bexar County.

Q. I thought you said that one of them didn't?

A. Well, one of them did not agree, but 9 of 9 the 10 did.

Q. Okay. But one didn't, right?

A. Sure, one didn't.

Q. So the delegation didn't completely agree?

A. I don't think -- I think El Paso is the only delegation where everybody agreed.

Q. What about Travis County?

A. Actually, no, you're right. Travis County everybody agreed.

Q. Okay. I want to circle back to these instructions from --

A. Sure.

Q. -- Chairman Solomons, which I heard you say initially worked together. Was the Travis County process, for example, or the Bexar County process, or the El Paso County process, was that in keeping with Chairman Solomons' instruction of working together even if there was no ultimate agreement amongst all members of the delegation?

A. I would think so.

Q. Okay. But if a delegation refused to work together and didn't agree, that would not be in keeping with Chairman Solomons' instructions, right?

MS. COLMENERO: Objection, calls for speculation. You can answer it to the extent you can.

THE WITNESS: I guess not.

Q. BY MR. SELLS: Well, you certainly had an understand of Chairman Solomons' instructions?

A. Correct.

Q. You heard them on the house floor?

A. Correct.

Q. And you heard him say that he wanted delegations to work together.

A. Correct.

Q. And you know that there are some delegations that refused to work together?

A. It's not that there were delegations that refused to work together, I think there were just delegations -- I'll give you an example of Dallas County, Dallas County was losing two seats, and it was very hard to get everybody in Dallas County to

* * *

Excerpts from Defendants' PowerPoint Presentation
***Perez v. Texas*, No. 11-CV-360 (W.D. Tex.)**

* * *

The Evolution of District 23			
Plan	HCVAP	SSVR	Reconstituted Election Analysis
1151C (court-drawn upon failure of 77th Legislature to enact a plan)	57.5%	55.3%	N/A
1374C (struck down in *LULAC v. Perry*)	46%	44%	N/A
C100 (court-drawn on remand from *LULAC v. Perry*)	58.4%	52.6%	3 of 10
C185 (enacted by the 82nd Legislature)	58.5%	54.8%	1 of 10

Source: Red Appl RED 106 & 202 Reports for C100 and C185; *Session v. Perry*, 298 F. Supp. 2d 451, 496 (E.D. Tex. 2004), *rev'd sub nom. LULAC V. Perry*, 548 U.S. 399 (2006).

* * *

The Texas Legislature Could Not Draw A Latino Opportunity District in Dallas/Fort Worth

"Q. Is it your testimony that you didn't attempt yourself to draw a Latino majority district in Dallas/Fort Worth?

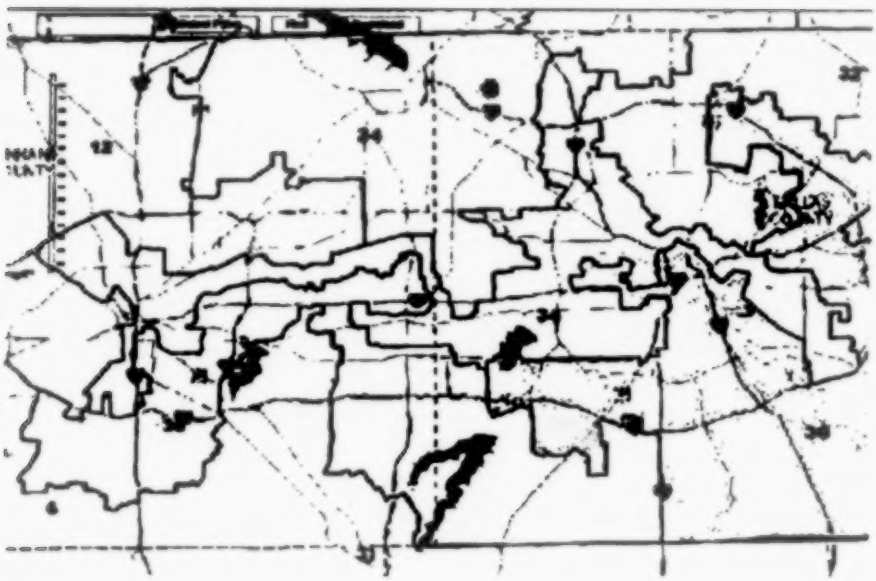
...

A. No. I tried. I was no more successful than the models that I saw."

Deposition of Doug Davis, at 59:10-15 (Aug. 29, 2011).

"In looking at both his version of the map and maps proposed by other groups, and trying to draw one myself, we weren't able to draw a district in north Texas that had an HCVAP above 50 percent."

Testimony of Ryan Downton, Trial Transcript at 906:14-17.



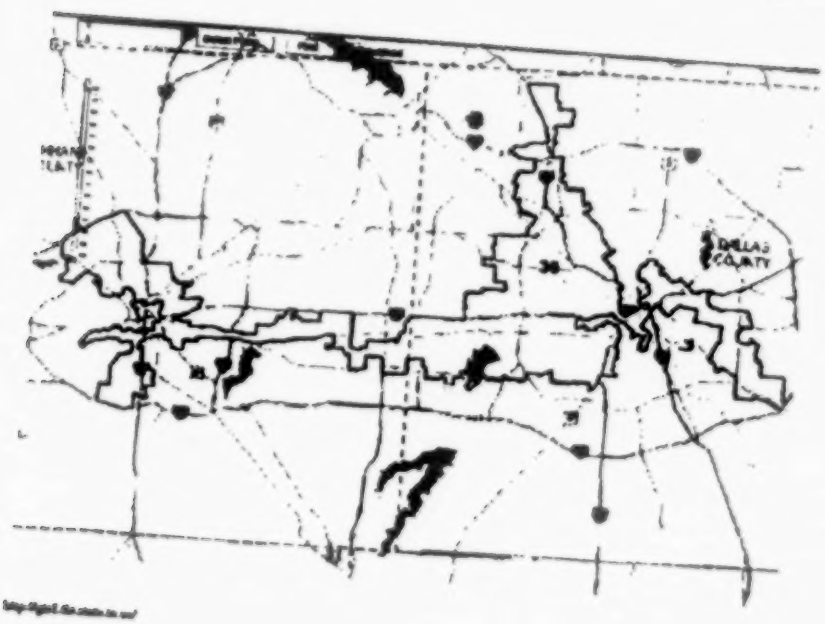
C121
Joint Agreed Maps and Data, Binder 1, J-2

C121 (Quesada Plaintiffs)
CD 34

Perimeter to Area: .043 (23.26)
Area to Rubber Band: .331 (3.02)

HCVAP: 45.6%
SSVR: 41.8%

Sources:
TLC Red-315 for Plan C121
TLC Red 109 Report for Plan C121



C122

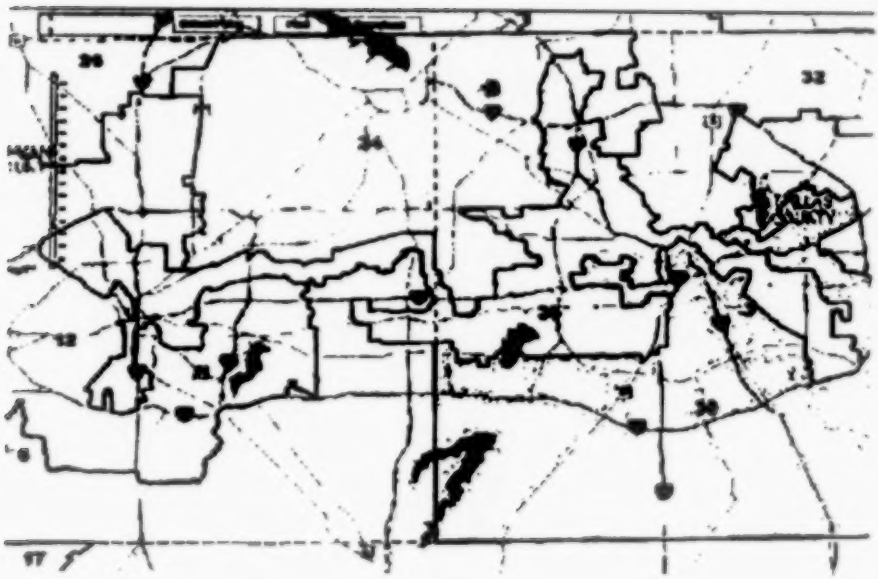
Joint Agreed Maps and Data, Binder 1, J-3

C122 (Latino Task Force)
CD 35

Perimeter to Area: .038 (26.32)
Area to Rubber Band: .302 (3.31)

HCVAP: 45.0%
SSVR: 41.5%

Sources:
TLC Red-315 for Plan C122
TLC Red 109 Report for Plan C122



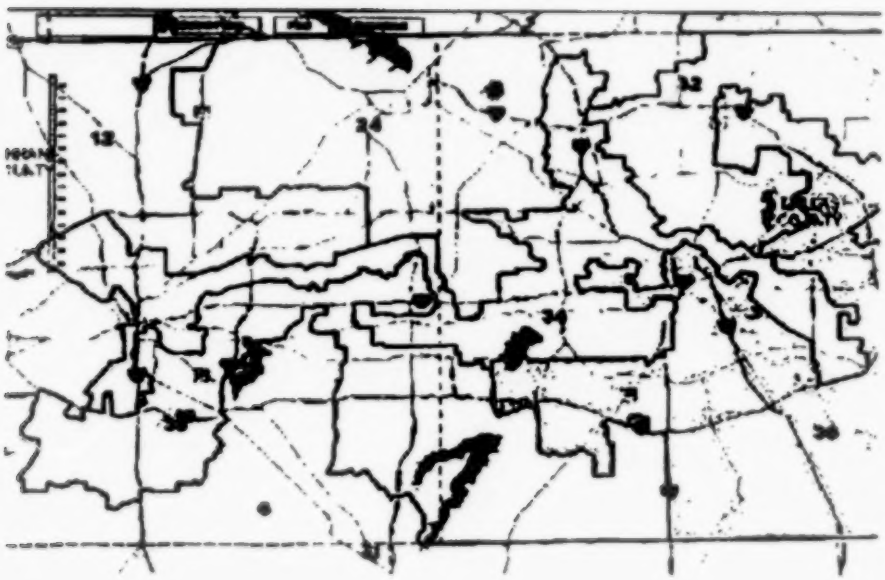
C166
Joint Agreed Maps and Data, Binder 1, J-7

C166 (Rodriguez Plaintiffs)
CD 35

Perimeter to Area: .043 (23.26)
Area to Rubber Band: .331 (3.02)

HCVAP: 45.6%
SSVR: 41.8%

Sources:
TLC Red-315 for Plan C166
TLC Red 109 Report for Plan C166



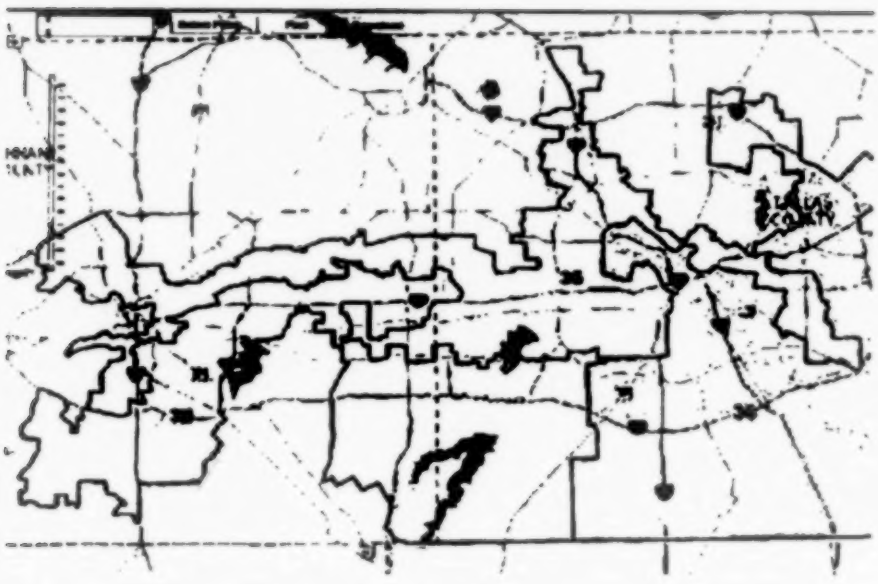
C192
Joint Agreed Maps and Data, Binder 1, J-13

C192 (Quesada Plaintiffs)
CD 34

Perimeter to Area: .043 (23.26)
Area to Rubber Band: .331 (3.02)

HCVAP: 45.6%
SSVR: 41.8%

Sources:
TLC Red-315 for Plan C192
TLC Red 109 Report for Plan C192



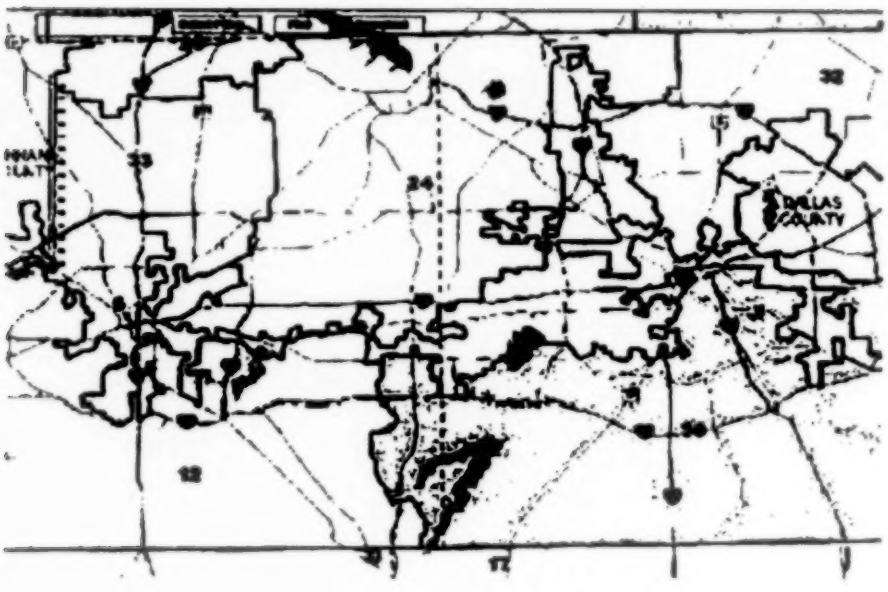
C193
Joint Agreed Maps and Data, Binder 1, J-14

C193 (NAACP)
CD 35

Perimeter to Area: .037 (27.03)
Area to Rubber Band: .331 (3.02)

HCVAP: 44.6%
SSVR: 40.3%

Sources:
TLC Red-315 for Plan C193
TLC Red 109 Report for Plan C193



C190
Joint Agreed Maps and Data, Binder 1, J-11

C190 (Latino Task Force)
CD 6

Perimeter to Area: .018 (55.56)
Area to Rubber Band: .303 (3.30)

HCVAP: 50.4%
SSVR: 43.6%

Sources:
TLC Red-315 for Plan C190
TLC Red 109 Report for Plan C190

DIFFERENT MEASURES OF COMPACTNESS

Accordingly, I have selected three common measures of compactness and generated values for each district in selected redistricting plans. The measures are[1]:

Perimeter to Area - Known as the Polsby-Popper test, this measure compares the area of the district with the area of a circle of the same perimeter, using the formula $4\pi Area/Perimeter^2$. This measure highlights convoluted, zig-zagging boundaries.

Area to Rubber Band[2] - compares the area of a district to the area of the minimum convex polygon (often called a convex hull) that surrounds the district as a geometric figure. The convex hull can be envisioned as the polygon created by stretching a rubber band around the district shape. The calculation is made as Area of District/Area of Convex Hill. This measure primarily highlights where a district has large bends in its overall shape, wrapping around parts of other districts.

Area to Smallest Circle - Also known as the rock test, the ratio of the area of a district to the area of the smallest circle which will circumscribe the district boundary. The calculation is Area of

---

[1] Richard G. Neimi; Bernard Grofman; Carl Carlucci; Thomas Hofeller, "Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering, The Journal of Politics, Vol. 52, No. 4 (Nov. 1990), pp. 1155-1181

[2] Dis9 in Niemi, et al.

District/Area of Smallest Circle and primarily highlights districts that are long and thin in shape.

Source: Joint Expert Binder #4, Report of Todd Giberson, page 2

	Perimeter to Area	Area to Rubber Band	Area to Smallest Circle
Average Score (mean)	6.4	1.5	3.2
Standard Deviation	3.7	0.2	1.0
One std. dev. above mean	10.1	1.7	4.2
Top 5 least compact districts			
37.4 (CD 6, 1996)[1]	2.3 (CD 6, 1996)[1]	8.5 (CD 25, 2004)[2]	
16.9 (CD 12, 1996)[1]	2.2 (CD 25, 2004)[2]	6.5 (CD 15, 2004)[2]	
11.8 (CD 25, 2002)	2.2 (CD 15, 2004)[2]	5.2 (CD 26, 2004)	
11.6 (CD 15, 2004)[2]	2.0 (four districts)	5.2 (CD 26, 2006)	
11.4 (CD 8, 1996)	2.0	5.1 (two districts)	
n=126 districts			

1) CD 6 and CD 12 were adjacent districts in the Fort Worth area, drawn originally in 1991 for partisan, not racial/ethnic reasons and largely left intact after the court, in 1996, redrew nearby CD 30 in Dallas.

2) CD 25 and CD 15 were two of the long, thin districts connecting central Texas with the Rio Grande Valley in the 2004 Congressional district plan. These were both redrawn to be much more compact after nearby CD 23 was struck down by the Supreme Court in LULAC v. Perry.

Table 1, Giberson Report.

Compactness Scores on District 6 in Plan C190

"District 6 (C190) has a higher percent HVAP, 66.8%, and attains an HCVAP of 50.4% - but it has compactness scores that are the largest of all districts analyzed, 54.4 / 3.3 / 9.5. All three of these values are greater than any corresponding value in the districts compiled for Table 1."

Giberson Report 6-7 (notes omitted).

Excerpts from House Journal
Eighty-Second Legislature, Regular Session
SUPPLEMENT
Sixty-Third Day – Wednesday, April 27, 2011
HB 150 – DEBATE

* * *

[S133]

WALLE: Representative Farias, what—and I'll be honest with you I don't know all of Bexar County and I don t' know the lay of the land but just for my understanding, how long have you been in the legislature?

FARIAS: This is my third session.

WALLE: Your third session. And you obviously served those folks very admirably. Do they want you to be their representative?

FARIAS: Well, they have reelected me three times. So, I believe that I have done my due diligence with the folks out there.

WALLE: And is it safe to assume that—that just if we are now talking about democrats and republicans—we're not going to get into that, I m' not going to get into that—those boxes in that area have supported you; is that correct?

FARIAS: Yes, they have in that whole area. And I did gave up a lot of the Summer Shed, if you're not familiar with it, and I gave a lot of the rural community that I represented. And you might not want to talk democrats and republicans and I didn't either. I didn't bring that up. But I assure you I

know the folks out there and Mr. Garza will probably be better off not having those precincts.

WALLE: And how many terms has Mr. Garza served?

FARIAS: He's a freshman.

WALLE: Thank you.

REPRESENTATIVE VILLARREAL: Joe, thank you for bringing your amendment. I know this is not a partisan issue with you. This is about communities of interest, isn't it?

FARIAS: Exactly.

VILLARREAL: And these are neighborhoods and communities that you have represented for many years and have come up here to Austin and worked on many issues for them?

FARIAS: For three sessions and I continue to as we speak.

SOLOMONS: Let me just explain what I think are some relevant issues to this. First of all, the amendment—the Bexar County map was at least initially agreed to and voted on by a majority of the delegation, does not have the agreement of all affected members. The proposed District 117 was drawn to bring together rural and suburban communities and interests in south and west Bexar County. The amendment as proposed creates a jagged and awkward line that divides these communities and creates an island along I 37 that connects to the west of the district by only a tiny strip of land. And a proposed map cleanly follows the proposed map as it exists today, follows the Medina

River, a natural barrier that divides the rural and urban counties—communities in south Bexar County. The amendment reduces the compactness of both 117 and 118. It increases number of split precincts in District 117 from one to seven and in District 118 from nine to fifteen, and increases the number of split VTD's in District 111 from one to seven and in District 118 from 10 to 15. It does have a negative impact on District 117; republican numbers. It is a district that—it goes from—let's see—pretty much—that's pretty much it. I guess the will of the house—I m' going to make a motion to table but it really will become a matter for the will of the house, I suppose, but I m' going to oppose it because of the reasons stated. It s' trying to lay out what I think the amendment does in connection with compactness and increases the split of precincts and increases the number of split VTDs.

FARIAS: Mr. Speaker, members, this is about a neighborhood who is extremely poor. And I would not be a good representative if I was not up here fighting for those folks that I've represented for the last six years. That's all I'm asking for. I'm not asking for new territory. I m' asking for an area that I represented for the last three terms. And so, as y'all take the vote, please, consider that this is just about a sliver of southern Bexar County which doesn't include a lot of houses, but I m' here because I want to go back to those folks and be able to tell them that I stood up at the front mic and argued my point to keep them and be able to represent them. So I ask that y'all vote on my behalf and on behalf of the people that I represent and I've represented for the last six years is all I m' asking for.

This isn't about democrats to me, it's not about republicans. It's about the area that I've had for years. And so with that, I ask for your support.

[Amendment No. 2 was tabled.]

[Amendment No. 3 by R. Anderson was laid before the house.]

[Amendment No. 4 by R. Anderson to Amendment No. 3 was laid before the house.]

REPRESENTATIVE R. ANDERSON: Thank you, Mr. Speaker, members. This is a difficult day for, for those of us in Dallas County, especially those of us who have been paired. And, quite frankly, I want to say this amendment seeks to amend the layout of Dallas County but I cannot tell you how appreciative that I am to the committee and to Chairman Solomons for his leadership. But this draws me into a district that pairs with me a very good friend, Linda Harper-Brown. I believe that the district that is as it is currently drawn in the committee map is a fair and legal district that could be won by either Representative Harper-Brown or myself after a very difficult primary contest. But that being said, I believe there s' another way to keep the core districts and communities of interest together. It keeps Mesquite, Garland, Richardson, Carrollton, Addison, Irving and Grand Prairie predominantly intact. It also reflects the diverse neighborhoods that are located within the city of Dallas. And like the committee map it keeps African American and Hispanic communities of interest intact. Like the committee map, it keeps seven republican districts above fifty-two and a half. But

the four districts with lowest republican voting strength in this map—

GIDDINGS: Representative Anderson, if this amendment should go on, what effect does it have, if any, does it have on the rest of Dallas County?

R. ANDERSON: It is very similar in lay out for the majority of Dallas County for most of those—most of the districts on the west and the south. It predominantly—what this does, it does pair members on the north and east * * *

U.S. Department of Justice

Civil Rights Division

Voting Section – NWB
950 Pennsylvania Ave., NW
Washington, DC 20530

November 7, 2011

Via Email: Chashawn_White@dcd.uscourts.gov

Honorable Rosemary M. Collyer
United States District Judge
United States District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington D.C. 20001

RE: *Texas v. United States*, No. 1:11-cv-01303 (RMC-TBG-BAH)

Dear Judge Collyer:

The United States is writing in response to the State of Texas' letter to this Court dated November 3, 2011. We reiterate the position that we expressed at oral argument; this Court should take the time it needs to reach a conclusion regarding whether summary judgment would be appropriate.

Contrary to the State's suggestion in its letter, the United States has never argued that the pendency of interim-plan proceedings in *Perez v. Perry* (W.D. Tex.) prohibits this Court from judicially preclearing the Congressional and State House redistricting plans. Rather, the United States has argued that this Court should not judicially preclear those plans because there are genuine disputes of

material fact as to their discriminatory purpose and retrogressive effect.

The *Perez* court has jurisdiction to craft interim plans to be used for upcoming elections if the State's proposed plans are not precleared under Section 5 in time for those elections to proceed in an orderly fashion. *Branch v. Smith*, 538 U.S. 254, 268-72 (2003). The *Perez* court in fact held hearings last week regarding potential interim plans for this purpose, and issued an order on Friday, November 4, setting out an election schedule, with candidate qualifying beginning on November 28. Once this Court determines whether the State is entitled to summary judgment, a brief order to that effect might assist the *Perez* court regarding implementation of interim plans.

The United States disagrees with the assertion in the State's post-argument letter that this Court could preclear only part of a redistricting plan. Section 5 preclearance does not function like a line-item veto where parts of the redistricting plan are approved for implementation. *See Pitts v. Busbee*, 511 F.2d 126, 129 n.2 (5th Cir. 1975) (holding that unobjectionable portion of law does not receive preclearance and the entire law is not enforceable); *see also* 28 C.F.R. § 51.59 (setting out the Attorney General's method of "determining whether a submitted redistricting plan has a prohibited purpose or effect" rather than addressing submitted districts). If there is discriminatory purpose, the entire plan is infected, and no portion may be precleared. *City of Richmond v. United States*, 422 U.S. 358, 378-79 (1975) (holding that a change affecting voting adopted with a discriminatory

purpose violates Section 5 even though there is no discriminatory effect); *Busbee v. Smith*, 549 F. Supp. 494, 517-518 (D.D.C. 1982) (three-judge court) (finding that the political process did not function in a nondiscriminatory manner, and the whole plan was invalid even though one district increased in minority voting strength). Likewise, if any part of a redistricting plan is retrogressive, the entire plan is null and void. *See Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 94 (D.D.C. 2002) (three-judge court) (denying declaratory judgment for redistricting plan because three districts diminished the ability of black voters to elect candidates of choice), *vacated*, 539 U.S. 461 (2003). As alluded to at oral argument, remedying a finding of retrogressive effect in some districts could require changes in some or all of the other districts in the plan, thus making it impossible to preclear a redistricting plan only in part.

Upham v. Seamon, 456 U.S. 37 (1982), does not stand for the proposition that the State can receive a declaratory judgment that particular districts in a redistricting plan meet Section 5 standards. As explained in our brief filed with the *Perez* court (attached), the Attorney General had interposed an objection to the plan at issue in *Upham* on the basis that in two districts, minority voters' ability to elect was diminished. Because there was a final administrative determination under Section 5, the *Upham* court could seek to cure the objection by drawing a remedial plan that corrected the specifically identified Section 5 deficiencies that had resulted in the objection. Here, there is no decision on Section 5 preclearance, and the law is clear that, in such situations, courts "should not put into effect

the very plans ... which have failed of preclearance by the Attorney General or are awaiting a preclearance decision by [the United States District Court for the District of Columbia]." *South Carolina v. United States*, 589 F. Supp. 757, 759 (D.D.C. 1984) (three-judge court).

We do not believe that it is appropriate to reargue in a letter to the Court the retrogression and intent standards. If the Court would like supplemental briefing on any issue, we would be happy to submit additional argument.

Sincerely,

Timothy Mellett
Deputy Chief, Voting Section

cc: All counsel of record via email

APPELLANT'S BRIEF

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.

On Appeal from the United States District Court for the Western District of Texas

BRIEF FOR APPELLANTS

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December 21, 2011

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QUESTION PRESENTED

The Texas Legislature enacted new electoral maps for the Texas House, Texas Senate, and U.S. House of Representatives in light of population changes in the 2010 census. Texas is actively seeking judicial preclearance of those maps under Section 5 of the Voting Rights Act.

The question presented is whether, while preclearance remains pending, another district court may order the use of judicially drawn "interim" electoral maps that give no deference to the State's duly-enacted maps, are not premised on any actual or likely violation of law, and are based on nothing more than the court's own notion of sound public policy and "the collective public good."

LIST OF PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, appellants include Hope Andrade, Steve Munisteri; and the State of Texas.

In addition to the parties named in the caption, appellees include Harold Dutton, Jr.; Gregory Tamez; Nancy Hall; Sergio Salinas; Dorothy Debose; Margarita V. Quesada; Romeo Munoz; Jane Hamilton; Lyman King; John Jenkins; Joey Cardenas; Alex Jimenez; Emelda Menendez; Marc Veasey; Tomacita and Jose Olivares; Alejandro and Rebecca Ortiz; Alex Serna; Beatrice Saloma; Betty F. Lopez; Constable Bruce Elfant; David Gonzalez; Eddie Rodriguez; Milton Gerard Washington; Sandra Serna; Balakumar Pandian; Eliza Alvarado; Jose Martinez; Juanita Valdez-Cox; Lionor Sorola-Pohlman; Nina Jo Baker; John T. Morris, *pro se*; the Texas Latino Redistricting Task Force; the City of Austin, Travis County; and Mexican American Legislative Caucus (MALC).

Intervenors-appellees include Henry Cuellar; Eddie Bernice Johnson; Sheila Jackson-Lee; Alexander Green; Howard Jefferson; Bill Lawson; Juanita Wallace; Anita Sue Earls; The League of United Latin American Citizens (LULAC); the Texas State Conference for National Association for the Advancement of Colored People (NAACP) Branches; the Texas Legislative Black Caucus; Boyd Richie; and the Texas Democratic Party.

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BRIEF FOR APPELLANTS

OPINIONS BELOW

The district court's interim redistricting orders for the Texas House, Texas Senate, and U.S. House of Representatives are reproduced at JA 132–55, 166–204, and 406–09. The district court's decisions denying stays of those orders are reproduced at JA 122–31, 156–65, and 392–405. The district court's "Supplemental Opinion" is reproduced at JA 89–121.

JURISDICTION

This is an appeal from a three-judge district court's entry of three orders directing Texas to implement interim redistricting plans for the 2012 elections for the Texas House, Texas Senate, and U.S. House of Representatives. The district court issued its interim redistricting orders for the Texas House and Texas Senate on November 23, 2011, and for the U.S. House on November 26, 2011. On December 9, 2011, this Court granted a stay of those orders and noted probable jurisdiction. This Court has jurisdiction under 28 U.S.C. § 1253.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent provisions of the Voting Rights Act ("VRA") and the regulations promulgated thereunder are reproduced in the appendix to this brief.

STATEMENT

Texas experienced remarkable population growth in the first decade of this century. As a result, Texas will have four additional

Representatives in the United States Congress beginning with the 2012 congressional elections. Those four new seats necessitated the redrawing of the electoral map for the U.S. House of Representatives. The population growth also rendered the existing electoral map for the U.S. House, the Texas Senate, and the Texas House of Representatives inconsistent with one-person-one-vote principles. As a consequence, the Texas Legislature redrew all three maps.

Texas remains a "covered jurisdiction" under Section 5 of the VRA. Accordingly, before any voting change may be enforced, Texas must obtain "preclearance." The VRA gives covered jurisdictions two alternatives for preclearing voting changes. They may either file a declaratory judgment action in the United States District Court for the District of Columbia or seek administrative preclearance from the Department of Justice ("DOJ"). Texas pursued the former route and filed a declaratory judgment action the day after the last of the three maps was signed into law. The duly-enacted maps were also challenged in federal district court in Texas by a number of individuals and groups who alleged that the new plans were unlawful under the VRA and the Equal Protection Clause.

Consistent with the customary practice under the VRA, the Texas court refrained from awarding relief while the preclearance litigation in the District of Columbia went forward. A number of the plaintiffs in the Texas action intervened in the preclearance action and that litigation became bogged down. At the plaintiffs' request, the district court in Texas then announced its intention to draw

"interim" maps to govern the 2012 election cycle while the issue of permanent preclearance remained pending before the D.C. court. At the summary judgment hearing in the preclearance action, the court asked whether a speedy preclearance decision remained necessary in light of the Texas court's eagerness to drawn interim maps. Only Texas urged the D.C. court to move forward expeditiously. The court denied summary judgment but withheld a final ruling on preclearance.

The Texas court, rather than employing the duly-enacted legislative maps as the interim maps, or making any finding of a likely statutory or constitutional violation and tailoring equitable relief accordingly, redrew all three electoral maps. The Texas court not only declined to defer to the duly-enacted legislative maps, but also expressed its belief that it could not even use the legislative maps as a starting point because doing so would be tantamount to allowing the voting changes to take effect without preclearance. The court was unpersuaded by the fact that whatever relief it gave was only interim, and that the issue of preclearance remained very much pending before the D.C. court. Having rejected the duly-enacted legislative maps as the appropriate starting point for its analysis, the Texas court proceeded to draw maps governed by its own sense of appropriate public policy. In doing so, the Texas court made numerous highly controversial policy judgments about where to respect county boundaries, where to try to create "coalition districts," and how to distribute the four new congressional seats.

The questions presented here boil down to two: 1) whether the Texas court's approach is consistent with the deference traditionally given States, equitable principles, and the proper, and properly limited, role of the courts, and 2) if not, what is the proper resolution of this case given the looming deadlines for the 2012 primary elections.

A. The Voting Rights Act

This case arises from the interplay of two key provisions of the Voting Rights Act of 1965 ("VRA"), 42 U.S.C. § 1973 *et seq*.

Section 2 of the VRA broadly prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgment of the right . . . to vote on account of race or color," or on the account of a person's membership in a "language minority group." 42 U.S.C. § 1973(a); *id.* § 1973b(f)(2). This provision "was designed as a means of eradicating voting practices that 'minimize or cancel out the voting strength and political effectiveness of minority groups.'" *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 479 (1997) (citation omitted). Section 2 operates nationwide and respects the normal presumption that duly-enacted state laws take immediate effect. The burden is on the plaintiff to bring suit and seek and obtain injunctive relief to stop a duly-enacted law from taking operative effect. Likewise, a presumption of good faith and validity attaches to the State's maps at all stages of the Section 2 proceeding. *See Miller v. Johnson*, 515 U.S. 900, 915-16 (1995).

Section 5 of the VRA, by contrast, applies only to "covered jurisdictions," and reverses the normal rule that a duly-enacted law takes immediate effect by requiring those jurisdictions to obtain preclearance before an enacted voting change may be enforced. The statute directs covered jurisdictions seeking preclearance to file a declaratory judgment action in federal district court in Washington, D.C. *See* 42 U.S.C. § 1973c(a). As an alternative, the statute also provides covered jurisdictions the option of seeking administrative preclearance from the Department of Justice. *Id.* For covered jurisdictions, like Texas, Section 5 "suspend[s] all changes in state election procedure" until they are "submitted to and approved by a three-judge Federal District Court in Washington, D.C., or the Attorney General." *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S.Ct. 2504, 2509 (2009). The standard governing preclearance is whether the change neither "has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c(a).

Nothing in the text of the VRA directly addresses the need for "interim" relief or how to resolve the dilemma created when the State's pre-existing election rule cannot be employed, but the new rule is subject to pending preclearance proceedings. Since Section 5 addresses only changes to existing voting laws, the normal presumption is that the pre-existing rule will continue in effect until the new change is precleared. But that presumption is inapplicable when new congressional seats are created or pre-existing maps fail to conform to one-person-one-vote principles in light of new census

data. While the statute does not directly address this dilemma, regulations promulgated by the Justice Department under the VRA expressly acknowledge the possibility that a court may allow "emergency interim use without preclearance of a voting change." 28 C.F.R. § 51.18(d) (2011). The regulations make clear that such an interim use of a legislatively enacted redistricting plan while preclearance is pending is not the same thing as preclearance and in no way excuses the jurisdiction from obtaining preclearance before the plan may take effect on a permanent basis. *See id.*

While the VRA does not address what happens when a State entitled to additional seats in the U.S. House of Representatives does not have an operative map in place before the next election, Congress has addressed this issue in a different statute. In 1941, Congress enacted 2 U.S.C. § 2a(c), which provides that "[u]ntil a State is redistricted in the manner provided by the law thereof . . . if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State." Congress subsequently limited the operation of § 2a(c) by making clear that, wherever possible, Representatives "shall be elected only from districts." *Id.* § 2c. In short, 2 U.S.C. § 2a(c), read in light of § 2c, "function[s] . . . as a last-resort remedy to be applied when, on the eve of a congressional election, no constitutional redistricting plan exists and there is no time for either the State's legislature or the courts to develop one." *Branch v. Smith*, 538 U.S. 254, 275 (2003) (plurality op.).

B. The Texas Legislature's Redistricting Process

Between 2000 and 2010, Texas enjoyed remarkable population growth. The federal decennial census, released in December 2010, revealed that Texas' total population had grown by nearly 4.3 million people, to 25,145,561. Based on that increase, Texas was apportioned four additional seats in the U.S. House of Representatives, for a total of 36 seats.

The four new seats necessitated the redrawing of the congressional map. The substantial population growth also required the Texas Legislature to create new electoral maps for the Texas House and the Texas Senate to conform with one-person-one-vote principles. Accordingly, the Texas Legislature faced the challenge of redrawing all three maps, as well as the State Board of Education map. The Texas Legislature began the process of developing its redistricting plans almost a year before the maps were finally enacted, and before the 82nd Legislative Session was convened. In particular, the Texas House and Senate conducted numerous hearings throughout the State before convening the legislative session in January 2011. The House Committee on Redistricting also created an e-mail contact database to notify interested members of the public—including community leaders, advocacy groups, and elected officials—about upcoming legislative hearings.

While the Legislature and its committees worked diligently to lay the groundwork for redistricting, more concrete efforts needed to await

the release of block-level population data by the United States Census Bureau. Once the data were released on February 17, 2011, the Texas Legislature moved quickly to pass new redistricting plans. Leaders from both houses promptly sought additional input from the public and elected officials to ensure that the final plans fairly represented the relevant interests at stake. That process featured numerous committee hearings and meetings with legislators from both houses, and included organizations that represent the interests of minority groups.

Pursuant to House and Senate rules, every legislative hearing notice, every proposed redistricting plan submitted by the public, and every proposed amendment were posted on the Texas Legislative Council's redistricting website.[1] All public plans and amendments were also accessible through the "DistrictViewer," which is an internet-based application that displays all public maps and reports in an interactive format. The Texas Legislative Council also maintained two computer terminals that offered public access to district modeling software.

The legislative process for each of the redistricting plans proceeded as follows:

Texas House. The House Committee on Redistricting and the Speaker of the House's staff conducted a proactive outreach effort to ensure that interested parties had an opportunity to participate

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[1] *See* http://www.tlc.state.tx.us/redist/redist.html.

fully in the redistricting process. Leadership and staff held several meetings with House members from both parties, and with groups that represent minority interests, such as the Mexican American Legal Defense and Education Fund (MALDEF) and the Mexican American Legislative Caucus (MALC). Several of MALDEF's recommended changes were incorporated into the plan that was ultimately passed and signed into law. On the House floor, the Committee Chairman repeatedly encouraged members from various regions of the State to work collaboratively to submit consensus regional redistricting proposals. The committee took all of these regional proposals into consideration while crafting the new House plan.

On March 24, 2011, the Redistricting Committee held a public hearing to solicit input from the public about the upcoming reapportionment of Texas House districts. On April 13, 2011, the Committee Chairman released an initial plan (H113) for public and legislative consideration. The Committee held multiple public hearings on the Chairman's proposal. On April 19, 2011, the committee considered several amendments before approving an amended map and sending it to the House floor. That plan passed the House by a vote of 92 to 54 on April 27, 2011, and the bill passed in the Senate on May 17, 2011, by a vote of 24 to 7.

Texas Senate. The Senate Redistricting Committee also conducted proactive outreach with interested parties, including Senators, staff, and outside groups. The Committee Chairman released his statewide proposal on May 11, 2011, and the Redistricting Committee held two public hearings

shortly thereafter. On May 17, 2011, the Senate passed the bill by a near-unanimous vote of 29 to 2, and the House passed it four days later by a vote of 96 to 47.

U.S. House of Representatives. The House Committee on Redistricting conducted a public hearing on April 7, 2011 to solicit input from the public on congressional redistricting. The 82nd Legislature adjourned on May 30 without passing legislation reapportioning the districts for the U.S. House of Representatives, but the Governor called a special legislative session in part to address congressional redistricting.

The Senate Select Committee on Redistricting held a public hearing on June 3 to consider a proposed congressional redistricting plan. Later that day, after hearing testimony from interested members of the public, the Plan was voted out of committee. The full Senate considered the Plan on June 6 and passed it by a vote of 18 to 12. The House passed it on June 15 by a vote of 93 to 47.

C. The Preclearance Proceedings in D.C. District Court

As a covered jurisdiction under Section 5 of the VRA, Texas recognized the need to obtain preclearance for the new electoral maps. To that end, Texas began assembling the necessary materials for preclearance even before the Governor signed the maps into law. Once the Governor signed into law the state House and Senate plans (and the Board of Education plan, not at issue here), Texas worked to compile all of the election data, demographic information, and other materials

typically required by the Department of Justice ("DOJ") for administrative preclearance. *See* 28 C.F.R. § 51.27. The congressional plan was signed into law on July 18, 2011, and the very next day, the State sent DOJ a complete, informal administrative preclearance submission for each of the newly enacted electoral maps.

The same day, Texas formally sought judicial preclearance from the district court in the District of Columbia, as permitted by Section 5. *See Texas v. United States*, No. 1:11-cv-01303 (D.D.C. July 19, 2011). The State anticipated that its informal preclearance submission to DOJ would streamline the judicial proceedings and reduce or eliminate the need for time-consuming discovery. To that same end, during the pre-answer period Texas voluntarily provided (at DOJ's request) tens of thousands of pages of additional information and coordinated numerous interviews of state officials, all outside the court's normal discovery process.

Despite Texas' best efforts to facilitate an early answer from DOJ, DOJ declined to file an early answer, and thus Texas filed a motion to expedite the proceedings. The court denied Texas' motion. *See* Minute Order, No. 1:11-cv-01303 (D.D.C. Aug. 17, 2011). Over Texas' objections, the Court gave DOJ the full 60 days to file its answer, but granted the State's request for permission to file its motion for summary judgment *before* DOJ filed its answer. *See id.*

In the meantime, two dozen parties—many of whom also filed actions in the Texas court and are parties here—intervened in the Section 5 case. The

intervenors designated 11 expert witnesses and requested extensive discovery in an effort to block preclearance of the State's legislatively enacted maps. After DOJ filed its answer and Texas filed its motion for summary judgment, DOJ and intervenors obtained—again over Texas' objection—a delay of their response to the motion for summary judgment in order to seek additional discovery. JA 71–72, 922–24. At the same time, as explained below, the Texas court actively considered the possibility of interim relief.

Rather than viewing the possibility of interim relief as something to be avoided if possible, the D.C. court seemed to view that parallel action as *reducing* the need for expedited action. At the summary judgment hearing on November 2, 2011, the court observed that, from the outset, "there was great anxiety on the part of Texas that this case be decided by the 18th of November, 19th of November . . . . and it seems to me that the Western District of Texas is well ahead of us and so maybe that doesn't matter any more." Transcript at 110–11, No. 1:11-cv-1303 (D.D.C. Nov. 2, 2011). And at the conclusion of the summary judgment hearing, Texas was alone in urging that a prompt decision was necessary in light of the interim-map hearings taking place in the Western District of Texas. *See id.*; *see also* Letter from David J. Schenck to the Hon. Rosemary Collyer (Doc. 105), No. 1:11-cv-01303 (Nov. 3, 2011).

After the court denied summary judgment, Texas pressed for a prompt trial during the second week of December. *See* Plaintiff's Response to Court's Inquiries (Doc. 107), No. 1:11-cv-01303 (D.D.C. Nov. 22, 2011). DOJ and the intervenors, by

contrast, moved to abate the Section 5 proceeding entirely. *See* United States' and Intervenors' Motion to Hold Case in Abeyance (Doc. 108), No. 1:11-cv-01303 (D.D.C. Nov. 25, 2011). After this Court's stay order, however, the court set a trial date in the preclearance case for January 17, 2012, with closing arguments currently scheduled for February 3, 2012.

D. The Western District of Texas Litigation

1. As Texas was actively seeking preclearance of its new electoral maps in D.C. court, it also faced parallel litigation in the Texas court.

On May 9, 2011—before the Legislature had even passed its new redistricting plans—two individual plaintiffs filed suit in U.S. District Court for the Western District of Texas, asserting that Texas' existing electoral maps were unlawful, and that the court should, "[i]f need be, adopt an interim electoral plan for 2012 elections." *See* Complaint at 4, *Perez v. Texas*, No. 5:11-cv-0360 (W.D. Tex. May 9, 2011). Pursuant to 28 U.S.C. § 2284, the case was assigned to a three-judge panel consisting of District Judges Orlando Garcia and Xavier Rodriguez, and Fifth Circuit Judge Jerry Smith. The Texas State Conference of NAACP Branches and three individual plaintiffs intervened. Eddie Bernice Johnson, Sheila Jackson-Lee, and Al Green—representatives of Texas' 30th, 18th, and 9th congressional districts, respectively—were also permitted to intervene.

The Mexican American Legislative Caucus (MALC) filed a separate suit in the Western District of Texas, which was assigned to the same three-judge panel presiding over the *Perez* case. *See*

Mexican American Legislative Caucus v. Texas, No. 5:11-cv-361. A number of parties intervened in that case, including the League of United Latin American Citizens (LULAC), Congressman Henry Cuellar (the current representative of Texas' 28th Congressional District), the Texas Democratic Party, and various individuals. Several other groups also filed similar suits.[2]

2. The Plaintiffs in those cases attack the Texas House and congressional plans (but not the Senate plans) on a number of grounds, including claims of vote dilution under Section 2 of the Voting Rights Act, intentional discrimination under the Fourteenth and Fifteenth Amendments,[3] unconstitutional population deviation among districts, and unlawful racial or political gerrymandering. The district court consolidated all of the individual cases and designated *Perez* as the lead case. While the Texas

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[2] Eddie Rodriguez, Travis County, the City of Austin, and other individuals (the "Rodriguez Plaintiffs") filed suit in the Western District of Texas on May 30, 2011. *See Rodriguez v. Texas*, No. 1:11-cv-451. The Texas Latino Redistricting Task Force and several individuals (the "Task Force Plaintiffs") filed suit in the Western District of Texas on June 17, 2011. *Texas Latino Redistricting Task Force v. Perry*, No. 5:11-cv-490. Margarita Quesada and other individuals (the "Quesada Plaintiffs") filed suit on July 15, 2011. *See Quesada v. Perry*, No. 5:11-cv-592. And John Morris challenged Texas' congressional redistricting plan in a *pro se* lawsuit filed in the Southern District of Texas on June 15, 2011. *See Morris v. Texas*, No. 4:11-cv-2244.

[3] The district court granted Texas' summary judgment motion with respect to the Plaintiffs' Fifteenth Amendment claims. *See* JA 259.

court generally recognized that a final resolution of the Section 2 and constitutional claims on the merits would need to await the resolution of the preclearance litigation in the D.C. court, *see* JA 279, it moved forward with the Section 2 and constitutional claims to the extent of gathering evidence in a trial in the consolidated cases, which began on September 6 and concluded on September 16, 2011.

3. Six days after that proceeding concluded, Senator Wendy Davis—an intervenor in the Section 5 case and one of only two state senators to vote against the Senate map—brought a new suit challenging the Senate redistricting plan. *See Davis v. Perry*, No. 5:11-cv-788 (W.D. Tex.). That suit alleged that the Senate plan violated Section 2 of the VRA and the Fourteenth and Fifteenth Amendments. The district court initially planned to gather evidence on that challenge at a trial scheduled for November 14, 2011. *Davis* (Doc. 7).

On October 17, 2011, LULAC filed a virtually identical lawsuit challenging Texas' Senate redistricting plan, *see LULAC v. Perry*, No. 5:11-cv-855 (W.D. Tex.), which the court consolidated with the *Davis* case. Texas filed a motion to dismiss the *LULAC* complaint and a motion for judgment on the pleadings in *Davis* on October 21, 2011. Texas moved for summary judgment on November 5, 2011. The court has not ruled on either motion.

On November 8, 2011, the court ordered the parties to advise the court whether it should proceed with trial on the 14th. *Davis* (Doc. 68). Plaintiffs, the State, and the Texas Democratic Party filed

briefs advising the court that trial should be continued pending a ruling on preclearance. *Davis* (Docs. 70, 71, 72). On November 10, 2011, the court issued an order continuing trial indefinitely, with Judge Smith dissenting. *Davis* (Doc. 81).

E. The District Court's Interim Maps

Even before it became clear that the D.C. court would not issue a final decision on preclearance in time for the start of the 2012 election cycle, the plaintiffs began pushing the Texas court to order the use of interim maps while preclearance was pending.

On September 20, 2011, MALC notified the Texas court that DOJ had opposed preclearance of the Texas House and congressional redistricting plans. *Perez* (Doc. 358). Shortly thereafter, MALC and the Texas Latino Redistricting Task Force (hereinafter "Task Force") filed a motion for temporary restraining order to prevent implementation of those plans. *Perez* (Doc. 375). On September 29, 2011, the district court granted the motion, subject to further order of the court. *Perez* (Doc. 380).

MALC and the Task Force then urged the court to implement a schedule for the creation of interim redistricting plans. *Perez* (Doc. 383). The court directed the parties to file briefs and proposed interim plans, and appointed two employees of the Texas Legislative Council, as "independent technical advisors" to assist in drawing interim plans.

On October 7, Texas filed a pleading arguing that the Legislature's enacted plans should be implemented on an interim basis while preclearance

was pending. JA 280. Each group of plaintiffs and intervenors submitted their own proposed interim redistricting plans. Texas filed objections to all of the plaintiffs' and intervenors' proposed interim plans. JA 292. MALC, the Task Force Plaintiffs, the Rodriguez Plaintiffs, the Quesada Plaintiffs, the NAACP Plaintiffs, the African-American members of Congress, and Congressman Cuellar filed objections to some or all of the plans proposed by other plaintiffs and intervenors.

The court held a three-day hearing on the proposed interim redistricting plans.

1. The Interim House Order

On November 17, 2011, the district court issued two proposed interim maps for the Texas House: Plan H298, drawn by Judges Garcia and Rodriguez; and Plan H299, offered by Judge Smith in dissent. JA 207. The court ordered the parties to file comments and objections to the proposed interim plans by noon the following day. On November 23, 2011, the district court ordered the implementation of Plan H302 as the interim redistricting plan for the Texas House of Representatives, over Judge Smith's dissent. JA 166.

The starting point for the majority's analysis was that, because Texas had not yet received a final decision on its pending preclearance request, the Texas court could not give "any deference to the Legislature's enacted plan." JA 171. Freed from the need to defer to the legislative maps or to tailor its remedy to likely violations, the majority drew an entirely "independent map" based on its own notions of the "collective public good" and "neutral

principles" that "place the interests of the citizens of Texas first." JA 170. In doing so, the majority did not view its role as limited to remedying likely statutory or constitutional violations. Instead, the majority repeatedly emphasized that consideration of the merits was premature, and that its maps were "interim," not "remedial." JA 181. But, somewhat paradoxically, the majority redrew the maps to avoid any violations should the allegations ultimately prove meritorious and thus effectively treated plaintiffs' allegations as if they were meritorious. *See* JA 173 (noting that, for the districts that were "*challenged* as unconstitutional," the court "attempted to return them to their original configuration in the benchmark") (emphasis added).

In its "independent" interim map, the district court ordered sweeping changes to the legislatively enacted map. Even though the vast majority of districts for the Texas House had not even been *challenged* by DOJ in the preclearance proceeding or by the plaintiffs in this case, the majority's interim plan redrew the boundaries of 128 of the 150 House districts.

The majority's plan disregards countless carefully considered policy choices reflected in the legislatively enacted plan. For example, the court's map divides The Woodlands, a city north of Houston with more than 90,000 residents—splitting school districts and neighborhoods in the process—and creates a House district that one cannot drive across without crossing into another district. *See* JA 335. Similarly, the Court's plan divides the city of Frisco (population 116,000), a rapidly growing Dallas suburb whose residents had asked to be contained in

a single district. *Id.* Neither of these changes serves any apparent remedial purpose.

Moreover, the majority created three "coalition districts"—House Districts 26, 54, and 149—that join African-American, Hispanic, and Asian populations in what appears to be a concerted effort to reach a 50% threshold of minority citizen voting age population. The court offered no legal or factual justification for its creation of those apparently race-based districts.

The court's interim House plan also changes every single district in Dallas, Harris, and Tarrant Counties, despite the fact that most of these districts were not challenged by DOJ or the plaintiffs.[4] The only apparent purpose of the comprehensive reconfiguration of these counties is to minimize population deviations among districts—even though Texas' enacted plan was well within the ten percent threshold traditionally afforded state legislative redistricting plans. *See, e.g., Brown v. Thomson*, 462 U.S. 835, 842 (1983). Nevertheless, since the majority was expressly not deferring to the legislative map, and was drawing its own "interim" map, it assumed that more demanding standards applied to the judicial map. The majority also found it "apparent from these proceedings that the Legislature started from the presumption that it

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[4] The court's across-the-board disregard for carefully negotiated urban district lines caused particular consternation among legislators, including among the Texas Legislative Black Caucus. *See, e.g.*, http://blog.chron.com/texaspolitics/2011/12/african-american-lawmakers-dont-like-legislative-map/.

could have population deviations as high as ten percent, and from that presumption it began to gerrymander districts to meet its goal of creating or maintaining as many Republican districts as possible." JA 180.

Judge Smith dissented, asserting that the majority "produced a runaway plan that imposes an extreme redistricting scheme for the Texas House of Representatives, untethered to the applicable case law." JA 183. Unlike the majority, Judge Smith emphasized that district courts must "follow the policies and preferences of the States, as expressed in . . . the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution." JA 185–86 (quoting *White v. Weiser*, 412 U.S. 783, 795 (1973)).

Judge Smith recognized that a court "should not act as a rubber stamp for the State where its enacted plan has not been precleared," but "must give due regard to the will of the Legislature unless the [Voting Rights Act] or Constitution requires otherwise." JA 186–87. He emphasized that the court must "consider seriously the plaintiffs' claims and the status of the action pending in the D.C. Court," and take a "cautious and restrained" approach. JA 190.

Judge Smith further emphasized that "[i]n almost every instance in which one or more plaintiffs ask for a substantial change that would upset a legislative choice, the majority has elected to order that revision, immediately, in the interim redistricting plans that are effective for the 2012

elections." *Id.* The result was "a redistricting scheme that [rewards] the plaintiffs for their assertive pleadings and grants no meaningful recognition to the legitimate, nondiscriminatory choices that are a part of any comprehensive redistricting process." JA 191.

Judge Smith would have imposed a less intrusive interim map targeted at remedying what he believed to be four specific instances in which the plaintiffs had alleged "colorable claims of statutory or constitutional infirmity." JA 191–94. The majority, however, went far beyond those changes and, "as though sitting as a mini-legislature, engraft[ed] its policy preferences statewide despite the fact that no such extreme modifications [were] required by the caselaw or by the facts that are before this court." JA 194.

Texas moved the district court to stay implementation of its interim House plan pending appeal. JA 342. The district court denied that motion on November 25, 2011, over a dissent by Judge Smith. JA 156.

2. The Interim Senate Order

On November 17, 2011, the district court proposed Plan S163 as an interim redistricting plan for the Texas Senate and ordered the parties to file comments and objections to the proposed interim plan by noon the following day. JA 410. On November 23, 2011, the court ordered implementation of Plan S164 as the interim redistricting plan for the Texas Senate. JA 406.

Even though the DOJ conceded in the preclearance lawsuit that Texas' legislatively enacted Senate redistricting plan was entitled to preclearance, the Texas court nonetheless redrew Senate District 10 and four adjacent districts. Those alterations were based solely on the *allegations* of the Davis and LULAC plaintiffs, without any finding that those claims were likely to succeed. Indeed, all of the evidence before the district court showed that District 10 was, at most, a "crossover" district that was not protected by Section 2 or Section 5 of the Voting Rights Act. *See Bartlett v. Strickland*, 129 S. Ct. 1231 (2009).

Texas moved to stay the interim Senate redistricting plan pending appeal, and the court denied the motion on November 25, over Judge Smith's dissent. JA 392, 402.

3. The Interim Congressional Order

On November 23, 2011, the district court proposed Plan C220 as the interim redistricting plan for Texas' U.S. congressional districts, and directed the parties to file comments and objections. JA 205. On November 26, the court entered an order adopting that plan as the interim congressional redistricting map, over Judge Smith's dissent. *See* JA 132.

The majority's interim congressional plan alters the boundaries of *every single one* of the 36 congressional districts.[5] Indeed, several of the court-

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[5] The DOJ's objection to the legislative map for congressional districts is that, while by DOJ's count the legislative plan

drawn districts reassign 50% or more of the population from Texas' enacted plan. For example, Districts 20 and 35 in the court's interim plan maintain only 50% and 35% of their respective populations compared to the legislatively enacted plan. *See* Addendum at 9a, 10a (showing changes to Districts 20 and 35); MJA 23–24.

The majority's interim plan also disregards innumerable policy choices reflected in the legislatively enacted plan. For example, by dividing Nueces County, the court's plan frustrates the desire expressed by the public and legislators from both political parties that Nueces County and Cameron County serve as anchor counties in separate congressional districts.[6] The court's plan also divides the City of Arlington into three different congressional districts. JA 154.

Moreover, although District 25 was not the subject of the DOJ's opposition to preclearance in the D.C. court, the majority deliberately "preserved [D]istrict 25 as a crossover district" in order to "maintain[] the status quo and comply[] with Section

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maintained the total number of Hispanic and African-American "ability districts," it nevertheless retrogressed because whereas Hispanics in 2010 had ability districts in 7 of 32 seats, in the legislative map this number was 7 of 36. JA 580–81. This Court's decision in *Abrams v. Johnson*, 521 U.S. 74, 97-98 (1997), forecloses the DOJ's position, and this issue remains pending in the D.C. court. *Cf.* JA 581.

[6] *See* Trial Tr. at 1022:10–4; *see also* Trial Exhibit J-58, at 90:10–21; Trial Tr. at 1022:17–18; Trial Tr. at 1461:25–1462:7; Trial Exhibit J-61, at 113:20–22.

5." JA 144–45 n.24. The majority acknowledged that Section 2 of the VRA did not *require* the Texas Legislature to preserve crossover districts; however, it contended that its independent decision to preserve District 25 as a Democratic-leaning crossover district was "certainly permissible." *Id.*

In its effort to maintain District 25 as a crossover district, the majority significantly weakened District 35, a Latino-majority district created by the Legislature based on input from MALDEF and several Hispanic Democratic legislators from the San Antonio area. *See* Trial Tr. at 915:17-919:22. Under Texas' plan, that district would likely elect the Latino candidate of choice in ten out of ten elections, but that probability falls to six out of ten under the court's plan.[7]

The majority, moreover, deliberately created District 33 in Tarrant County as a coalition district in which African-American and Hispanic citizens combine to make up 50.5% of the citizen voting age population. JA 147 n.27. The court consciously created this coalition district not to remedy any legal violation, but simply "[b]ecause much of the growth that occurred in the Dallas-Fort Worth metroplex was attributable to minorities," JA 146,—*i.e.*, to attain proportional representation.

Judge Smith dissented from the court's interim congressional order. He would have ordered an

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[7] *Compare* Trial Exhibit D-2, Plan C185, District 35, Racially Polarized Voting Analysis, at 821–32; *with* Exhibit C, Plan C220, District 35, Racially Polarized Voting Analysis.

interim map based on Plan C216, a bipartisan plan submitted by Republican Congressman Francisco Canseco and Democratic Congressman Henry Cuellar. Judge Smith further identified ten specific instances in which the majority's interim map made unwarranted alterations to Texas' legislatively enacted map. JA 152–54.

On November 27, Texas moved the district court to stay implementation of its interim congressional plan pending appeal. The court denied the motion on the same day, over a dissent by Judge Smith.

4. The District Court's Supplemental Opinion

On December 2, after Texas had filed its emergency stay applications in this Court, the district court issued a 24-page "Supplemental Opinion" to "further clarify the legal issues discussed in the Court's prior two orders." JA 90. That supplemental opinion underscored the majority's belief that it could not defer to the duly-enacted legislative plans because doing so would be tantamount to circumventing the pending preclearance proceedings. JA 91–98. Instead, the majority accepted plaintiffs' argument that a jurisdiction actively seeking preclearance is treated no differently from a jurisdiction that has steadfastly refused even to seek preclearance. *Id.* The supplemental opinion likewise reiterated the majority's belief that its "interim" maps were different from "remedial" maps, and thus the normal rules limiting courts' remedial discretion did not apply. JA 96–100.

Judge Smith again dissented, asserting that "the order is already in the good hands of the Supreme Court," and that "[t]he majority's newly-revealed zeal to press for sweeping relief at this interim stage of the case is unseemly at best and downright alarming at worst." JA 120–21. He further noted that "[t]his 'Supplemental Opinion' has the smell of a brief on appeal," and that he "[could not] recall ever seeing an unsolicited 'supplemental opinion' come flying over the transom from a district judge desperate to lend further support for a shaky decision." JA 121.

F. The Upcoming Primary Elections

After this Court stayed the interim redistricting orders, the Texas court conducted a full-day hearing on December 13, 2011 regarding the timing of Texas' primary elections, which had been scheduled for March 6, 2012. In consultation with the Texas Secretary of State's Office and election officials from major Texas counties, the two major political parties reached an agreement—which the district court approved—to postpone all of Texas' primary elections until April 3, 2012. JA 85.

That agreement, however, is expressly contingent on there being usable maps in place by February 1, 2012. JA 80–81. If no usable maps are in place by that date, the political parties' carefully crafted agreement will be discarded, and some or all primary elections will be further delayed.

SUMMARY OF ARGUMENT

The procedural history of the parallel proceedings in the District of Columbia and Texas is long and tortuous, but the errors embedded in the orders under review are clear and straightforward. Despite the district court's confusion, the drawing of "interim" relief is very much an exercise of equitable and remedial discretion. Its entire legitimacy depends on it being so. Likewise, the pendency of preclearance does not deprive a legislative map of all claims to deference. Indeed, the fact that preclearance is pending and being actively pursued is precisely what distinguishes this case from prior cases involving recalcitrant jurisdictions, on which the Texas court mistakenly relied. Thus, the remarkable proceedings below bear no resemblance to the straightforward and proper course—treating the legislative maps as the presumptive "interim" maps and altering them only when necessary to remedy a likely statutory or constitutional violation. This Court should clarify as much so this kind of error is never replicated. The only real question is what to do now that the need for an "interim" map to govern the 2012 elections has become exigent.

I.A. The Texas court clearly erred by refusing to grant *any* deference to Texas' legislatively enacted districting maps. The drawing of legislative districts is a core function of state government that requires a complex balancing of countless different interests, and like all actions of state officials it enjoys a presumption of good faith. The sole exception is when officials in a covered jurisdiction have failed even to seek preclearance. But when a jurisdiction actively pursues preclearance, there is no reason to

relax the traditional presumption of good faith. Indeed, even when certain portions of a State's map are found to be unlawful, courts must still defer to the enacted map to the greatest extent possible, and must ensure that any alterations of the map are narrowly tailored to remedying the violation.

B. Federal courts are charged with resolving cases or controversies, which occasionally requires them to discharge the delicate responsibility of enjoining duly-enacted state and federal statutes. Well-established principles govern that sensitive judicial role. The court below freed itself of all of those constraints by labeling its role as "interim," not remedial. The order that resulted is more akin to a legislative act than a judicial one. Without making any finding of an actual or likely violation of law, the court simply redrew Texas' election maps based on its own notions of "neutral principles," the "collective public good," and "fairness and impartiality." JA 170–71. But those are not standards that courts can meaningfully apply. Redistricting is an inherently political process, and—in the absence of some violation of statutory or constitutional law—it is wholly committed to the discretion of state legislatures.

C. The Texas court's approach disregarded longstanding and well-settled principles of equity jurisprudence. The court was profoundly wrong to view its so-called "interim" orders as something other than a form of preliminary equitable relief governed by well-established rules. This Court has made clear that such relief is available only after the party challenging government action demonstrates a likelihood of success on the merits. *See Winter v.*

Natural Res. Def. Council, 555 U.S. 7, 32–33 (2008). The district court seemed to think that the normal rules of equity do not apply in light of the pending Section 5 proceedings. But the fact that any relief, including the use of the duly-enacted legislative map, is "interim" and that *permanent* changes must await preclearance is sufficient to accommodate Section 5. Any "interim" relief that goes further and alters the map based on alleged statutory or constitutional violations must comply with traditional equitable principles. Moreover, any equitable decree—interim or otherwise—must be narrowly tailored to remedying an actual or likely violation of law. The district court was flatly wrong to suggest that it "may not simply fix the problematic parts of the enacted map," but must instead create a new map out of whole cloth. Indeed, the requirement that equitable relief be narrowly tailored applies with even *greater* force in cases, such as this one, in which the equitable decree is explicitly race-conscious.

D. The practical effect of the district court's methodology is to punish Texas for delays in the preclearance process it did not cause and to create incentives for gamesmanship that exacerbate Section 5's already substantial intrusion on state sovereignty. Texas was saddled with the district court's far-reaching interim orders, not because its plans were found likely unlawful, but simply because the preclearance process was taking too long. And those delays are at least in part the result of intervention, discovery requests, and extension requests from the very same parties that are the plaintiffs in this case. The resulting potential for

gamesmanship is obvious: opponents of a legislatively enacted plan can effectively win the case without any ruling on the merits if they delay the preclearance proceeding as long as possible, and simultaneously file far-reaching claims of constitutional and statutory violations in another district court.

E. The Texas court erroneously relied on cases involving recalcitrant jurisdictions that declined even to seek preclearance. When the failure to seek preclearance is the problem, a remedy that incentivizes a covered jurisdiction to seek preclearance makes sense. But when a covered jurisdiction is already actively seeking preclearance, such remedies are wholly out of place.

II. The process the district court *should* have followed is straightforward: Texas' legislatively enacted map, which is entitled to a presumption of good faith, must be used as the "interim" map while preclearance is pending, unless the court makes a finding that some aspect of that plan is likely to violate the VRA or the Constitution. And, consistent with equitable principles, any interim alteration or modification of Texas' map must be narrowly tailored to remedying that likely violation of law.

This properly restrained approach to interim relief is entirely consistent with Section 5 of the VRA. Allowing an election to go forward on an interim basis is not the same thing as granting preclearance, nor does it eliminate the requirement that Texas obtain preclearance before it may use its new maps on a *permanent* basis. To the contrary, DOJ's own regulations make clear that "interim"

relief is just that, and does not obviate the need for preclearance before a voting change may take permanent effect. But that is the only way in which "interim" orders are distinct. They remain remedial orders subject to the normal rules governing equitable remedies.

III.A. The proper approach to "interim" relief is straightforward, and it is critical for this Court to correct the district court's errors so that this scenario is not replicated in future cases. The appropriate relief at this juncture—with Texas' already-delayed 2012 elections rapidly approaching, and candidates, voters, political parties, and state officials in desperate need of guidance about the precise contours of the districts under which those elections will be held—is less straightforward. Indeed, usable maps must be in place by February 1, 2012 even in order for the *delayed* primary elections to go forward under the agreement struck by the two major political parties and adopted by the district court. It is not at all clear that these exigencies of timing allow for a remand for the Texas court to apply the proper remedial standard and to craft yet another batch of interim maps for the upcoming elections.

In light of these exigencies, this Court should vacate the interim orders and remand to the district court with instructions to impose Texas' legislatively enacted map as the interim plan while preclearance is pending. Federal courts have authority to authorize the emergency interim use of a State's legislatively enacted plan without first obtaining preclearance, *cf.* 28 C.F.R. § 51.18(d), and the Court should exercise that authority here. Nothing in that order would relieve Texas of its undisputed

obligation to obtain preclearance before implementing its new maps on a permanent basis.

B. At a minimum, this Court should provide additional guidance for the district court to ensure that it does not make the same errors on remand. In addition to clarifying that the deference owed duly-enacted statutes and traditional equitable standards are both fully applicable, this Court should clarify several other points. *First*, the Court should reiterate that nothing in the VRA requires proportional representation on the basis of race, and that a State's failure to maximize the voting strength of minority groups does not violate the VRA. *Second*, the Court should hold that nothing in the VRA requires a State to draw "coalition districts," in which multiple minority groups are a combined majority of the population. The district court created a number of coalition districts in its interim orders, even though it was plainly permissible for the Texas Legislature to choose not to create those districts. *Third*, the Court should make clear that the district court may not depart from traditional districting principles, such as the Texas "county line rule," unless that departure is the only way to address an actual or likely violation of law. *Fourth*, the Court should clarify that the district court cannot seek to equalize population among state legislative districts unless the population deviations in the legislatively enacted map violate the law.

ARGUMENT

I. THE DISTRICT COURT CLEARLY ERRED BY IMPOSING INTERIM ELECTORAL MAPS THAT DISREGARD BASIC PRINCIPLES OF FEDERALISM, THE JUDICIAL ROLE, AND EQUITY JURISPRUDENCE

The district court did not mince words about what it was doing in the orders under review: even though it made no "ruling on the merits of any claims asserted by the Plaintiffs," the court nonetheless disregarded Texas' legislatively enacted maps and drew from scratch three "independent" interim maps designed to govern the 2012 election cycle for the Texas House, Texas Senate, and U.S. House of Representatives. JA 167, 169; *see also* JA 93–94 (expressing the view that it "must draw independent redistricting plans without ruling on the merits of the pending legal challenges").

The majority could not have been clearer that, in its view, it "was not required to give *any deference* to the Legislature's enacted plan." JA 171 (emphasis added); *see also* JA 103. Nor did it view its role as remedying actual or likely statutory and constitutional violations. Instead, it effectively accepted nearly all of the plaintiffs' allegations as meritorious, and redrew Texas' electoral maps to "avoid" those challenges. JA 101, 118; *see also* JA 190 (noting that in "almost every instance" the district court majority's maps accommodate the plaintiffs' claims).

Because it was drawing only an "interim" map, which it repeatedly insisted was different from a

remedial map, the district court concluded that it was not bound by traditional principles governing preliminary equitable relief, but was instead required to draw an "independent" plan. JA 96–99. The court further emphasized that it "may not simply fix the problematic parts of the enacted map," but instead "was obliged to adopt a plan that complies with the United States Constitution and also embraces neutral principles that advance the interest of the collective public good, as opposed to the interests of any political party or particular group of people." JA 170. The majority did not specify what standards or principles of law would inform its sense of "the collective public good."

The district court's judicially drawn interim maps disregard core principles of state sovereignty and equitable jurisdiction, exceed the properly restrained role of the judiciary, punish Texas for delays in *another* judicial proceeding that are beyond its control, and open the door to gamesmanship by opponents of legislatively enacted districting plans. Those errors, individually and collectively, require vacatur of the challenged orders.

A. The District Court Owed Deference to Texas' Duly Enacted Legislative Maps

It is well settled that "reapportionment is primarily the duty and responsibility of the State." *Chapman v. Meier*, 420 U.S. 1, 27 (1975); *see White v. Weiser*, 412 U.S. 783, 794-95 (1973). Any federal-court review of districting legislation "is a serious intrusion on the most vital of local functions," and courts must accordingly "be sensitive to the complex interplay of forces that enter a legislature's

redistricting calculus." *Miller v. Johnson*, 515 U.S. 900, 915–16 (1995). In light of the inherent difficulty of assessing legislative intent, as well as the "sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments," courts must "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Id.* at 916.

That presumption applies with full force to redistricting plans in states that are covered by Section 5 of the VRA. Section 5 is a significant intrusion into state sovereignty and reverses the normal presumption that duly-enacted state laws take immediate effect, but it does not rob covered jurisdictions of this fundamental presumption of good faith. Nor does it make the judicial task any less sensitive or difficult. This Court's precedents make this clear.

In *Upham v. Seamon*, 456 U.S. 37 (1982), Texas sought administrative preclearance for its reapportionment plan, but the Attorney General objected to two of the districts in the plan, thus rendering it "unenforceable." *Id.* at 38. In drawing a remedial interim map, the district court did not limit itself to correcting those violations of law; it also refused to accommodate so-called "political factors" reflected in the legislative plan, such as the desire to provide "safe" seats for certain representatives. *Id.* at 39–40.

This Court summarily reversed, agreeing with the petitioners and Texas that, "in the absence of any objection to the [] districts by the Attorney

General, and in the absence of any finding of a constitutional or statutory violation with respect to those districts, a court must defer to the legislative judgments the plans reflect, even under circumstances in which a court order is required to effect an interim legislative apportionment plan." *Id.* at 40–41. The Court noted that any "interim reapportionment order" requires "'reconciling the requirements of the Constitution with the goals of state political policy.'" *Id.* at 43 (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)).

An "appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those *necessary to cure any constitutional or statutory defect.*" *Id.* (emphasis added). That is, in the absence of any finding that some aspect of the challenged reapportionment plan "offended either the Constitution or the Voting Rights Act," the district court "was not free, and certainly was not required, to disregard the political program of the Texas State Legislature." *Id.*

Upham makes clear that, even when preclearance is *denied* with respect to certain districts, the State's legislatively enacted map remains entitled to deference, and any remedy must be narrowly tailored to correcting the legal defects in the challenged districts. It cannot be the rule that a State's legislatively enacted plan is entitled to less deference when a judicial preclearance proceeding is pending than after administrative preclearance has been denied. But that is precisely what the district court held in the challenged orders.

B. The District Court's Interim Maps Exceeded the Properly Limited Institutional Role of the Judiciary

Electoral districting "is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests." *Miller*, 515 U.S. at 915. Needless to say, it is a far more difficult subject for courts, and judicial review must be narrowly focused on judicially administrable standards. Indeed, even when a federal court "declares an existing apportionment scheme unconstitutional," it is still "appropriate, wherever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). The majority below lost sight of these bedrock principles and issued an opinion that took the court beyond "'the proper—and properly limited—role of the courts in a democratic society.'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (citation omitted).

The role of the federal courts is to resolve cases or controversies, and to "provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm." *Lewis v. Casey*, 518 U.S. 343, 349 (1996). Of course, when "actual harm" has been suffered, a court may properly "order [ ] the alteration of [the] institutional organization or procedure that cause[d] the harm." *Id.* at 350. Indeed, redressability is a core requirement of Article III. *See Lujan v. Defenders of*

Wildlife, 504 U.S. 555, 560–61 (1992). But without a finding of some actual or likely violation of law, a district court has no power whatsoever to impose a remedy. *See Milliken v. Bradley*, 433 U.S. 267, 282 (1977) (noting that "federal court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the constitution or does not flow from such a violation").

The Texas court freed itself from these traditional constraints by emphasizing that it was fashioning an "interim" order and not a "remedial" one. JA 181. But that dichotomy is utterly false. A court has authority to draw an "interim" map only to the extent it is an exercise of the court's remedial authority.

Once the Texas court declared itself unbound by the constraints that govern remedial orders, the orders that emerged, not surprisingly, were far more akin to legislative acts than judicial ones. The majority emphasized that it was *not* simply "fix[ing] the problematic parts" of the enacted maps, but was drawing an entirely "independent" map based on the court's own notions of "neutral principles," the "collective public good," and "fairness and impartiality." JA 170–71. The court "attempted to avoid the division of municipal boundaries and broader communities of interest," it "tried to avoid pairing incumbents" against one another, it "tried to avoid splitting county lines," and it "attempted to adhere to the historical or benchmark configuration on the districts as much as possible." JA 101–102. None of this remotely resembles the resolution of a "case or controversy." The court's attempt to follow neutral districting principles is commendable in the

abstract, but those are simply not choices for the court to make, unless it is remedying a likely or actual violation of law.

Redistricting is an inherently political process that involves a "complex interplay of forces," many of which are far removed from the core competency of the federal judiciary. *Miller*, 515 U.S. at 915. Numerous discretionary policy decisions are required "to exercise the political judgment necessary to balance competing interests," *id.*; *see also Vieth v. Jubelirer*, 541 U.S. 267, 358 (2004) (Breyer, J., dissenting) ("political considerations will likely play an important, and proper, role in the drawing of district boundaries"). When a violation of the VRA or the Constitution is alleged, courts have a necessary and cabined role in assessing and remedying any violation. But even then, this Court's cases are replete with references to the need to tread lightly. *See Upham*, 456 U.S. 42–43. For a court to attempt to draw a "fair" interim map, not to remedy some likely or actual violation, but simply to further the notion of the "collective public good," leaves the court completely at sea, engaged in something other than a judicial function.

Moreover, because the district court engaged in an essentially standardless exercise, it effectively eliminated any possibility for meaningful judicial review. Normally, when a district court enters an interim equitable remedy, such as a preliminary injunction, an aggrieved party may seek immediate appellate review on the basis that: (1) there is no likely violation of law that would justify the remedy; or (2) the remedy is not narrowly tailored to that likely violation. Neither avenue is meaningfully

available here. The district court expressly disclaimed any reliance on likely violations of law, and it is entirely unclear how an appellate court would evaluate the district court's "independent" balancing of the competing interests in drawing an interim map.[8]

Nothing in Section 5 of the Voting Rights Act, which imposes the preclearance obligation, remotely sanctions this essentially unreviewable judicial takeover of a state's redistricting process just because preclearance is pending. Section 5 is already at the very outer limits of Congress' constitutional authority. *See Nw. Austin*, 129 S.Ct. at 2511-13. Its intrusion on state sovereignty would become constitutionally intolerable if it could be read as sanctioning the sweeping, standardless interim remedies imposed by the district court here.

C. The District Court's Interim Maps Violate Longstanding Principles of Equity Jurisprudence

Any judicially crafted remedy for an allegedly unlawful redistricting plan "should act and rely upon general equitable principles." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *see also Mahan v. Howell*, 410 U.S. 315, 332 (1973) (holding that district courts "are bound to apply equitable considerations" in applying

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[8] For example, what if the district court's interim map disrupted a carefully crafted (and entirely race-neutral) political compromise that was critical to the passage of the legislatively enacted map? It is unclear how, if at all, the state could seek appellate review of that alteration of its map.

"interim remedial techniques in voting rights cases"). Here, the district court's interim maps—the existence of which is justifiable, if at all, only as an equitable remedy—flout well-established principles of equity jurisprudence, which make clear that any equitable remedy must be premised on an actual or likely violation of law, and must be narrowly tailored to addressing that harm.

1. Any Equitable Remedy Must Be Based on an Actual or Likely Violation of Law

The Texas court's so-called "interim" electoral maps are analytically identical to a preliminary injunction, as the purpose of both remedies is to provide temporary relief to a party while litigation is pending. A preliminary injunction, of course, is available only upon a showing that, *inter alia*, the plaintiff is "likely to succeed on the merits." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *cf. Nken v. Holder*, 129 S.Ct. 1749, 1756 (2009) (interim equitable remedy of a stay order is available only if the "applicant has made a strong showing that he is likely to succeed on the merits").

Having disclaimed any need to find likely violations to justify its "interim" (not "remedial") order, the court essentially redrew Texas' legislatively enacted election maps to address the plaintiffs' *allegations* of discrimination, without making even a preliminary determination of whether any of those claims were likely to have merit. *See* JA 101 (court's interim maps "attempted to avoid the same legal challenges" advanced by the plaintiffs). As Judge Smith noted in his dissent, "[i]n

almost every instance in which one or more plaintiffs ask for a substantial change that would upset a legislative choice, the majority has elected to order that revision, immediately, in the interim redistricting plans that are effective for the 2012 elections." JA 190. The result is "a redistricting scheme that [rewards] the plaintiffs for their assertive pleadings and grants no meaningful recognition to the legitimate, nondiscriminatory choices that are a part of any comprehensive redistricting process." JA 191.

2. Any Equitable Remedy Must Be Narrowly Tailored to the Legal Violation Being Remedied

As this Court has explained, in "any equity case, the nature of the violation determines the scope of the remedy." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971). Equitable relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *cf. Winter*, 129 S.Ct. at 376 (describing preliminary injunctive relief as "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief").

When "the exercise of authority by state officials is attacked, federal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.'" *Rizzo v. Goode*, 423 U.S. 362, 378 (1976) (citation omitted). Simply put, "appropriate consideration must be

given to principles of federalism in determining the availability and scope of equitable relief." *Id.* at 379.

Applying those principles, this Court has repeatedly vacated equitable decrees that swept more broadly than the harms they were intended to remedy—particularly where, as here, the remedial orders in question interfered with core prerogatives of state or local governments. In *Whitcomb v. Chavis*, 403 U.S. 124, 160–61 (1971), the district court entered an order eliminating every multi-member electoral district in Indiana based solely on a finding of discrimination in one inner-city area. This Court vacated the order, holding that "the District Court erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so." *Id.* at 161.

In *Milliken v. Bradley*, 418 U.S. 717 (1974), the district court imposed a desegregation plan for the Detroit public school system that extended far beyond the city limits to 53 neighboring school districts, without any consideration of whether those districts had engaged in discriminatory practices. *Id.* at 733. This Court vacated that order, emphasizing that, "[b]efore the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district." *Id.* at 744–45. Without "an interdistrict violation and interdistrict effect, there is no

constitutional wrong calling for an interdistrict remedy." *Id.* at 745.

Similarly, in *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 413, 418 (1977), the court of appeals imposed a sweeping, system-wide remedy on a school district, based solely on "three separate although relatively isolated" instances of racial discrimination. This Court reversed, faulting the court of appeals for "impos[ing] a remedy which . . . is entirely out of proportion to the constitutional violations found by the District Court," rather than "tailoring a remedy commensurate to the three specific violations." *Id.* at 417–18; *see also Lewis v. Casey*, 518 U.S. 343, 357–59 (1996) (holding that two instances in which prison inmates were denied access to a law library "were a patently inadequate basis for a conclusion of systemwide violation and imposition of systemwide relief").

If anything, the interim redistricting maps drawn by the district court in this case are even more overbroad than the equitable decrees that this Court vacated in the cases cited above. In those cases, there was at least *some* finding of a constitutional violation, albeit not one that would justify a sweeping structural remedy. Here, in contrast, the district court redrew Texas' legislatively enacted electoral maps even though it expressly *declined* to make even a preliminary ruling on the merits of the plaintiffs' claims. *See* JA 93–94, 167, 169. At the very least, deeply rooted jurisprudential principles required the district court to ensure that its equitable remedy was narrowly tailored to likely violations of law. The district court was flatly wrong to suggest that its authority

extended beyond "simply fix[ing] the problematic parts of the enacted map." JA 169.

3. Any Race-Conscious Remedy Must Be Narrowly Tailored

Those basic equitable principles apply with even greater force where, as here, a judicially imposed remedy is based on racial considerations. The guarantee of Equal Protection governs all government actions, including those of the judicial branch. *See, e.g., United States v. Paradise*, 480 U.S. 149, 166–67 (1987) (plurality op.) (applying strict scrutiny to court's race-based remedial order); *Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995) (holding that "all racial classifications, imposed by whatever federal, state or local governmental actor, must be analyzed by a reviewing court under strict scrutiny"). While courts sometimes issue race-based remedies, they generally do so to remedy actual, proven racial discrimination, in which case the remedies are both justified by a compelling interest and narrowly tailored. *See, e.g., Paradise*, 480 U.S. at 166–67 (plurality op.). A judicial order that takes race into account, but expressly disclaims any intent to remedy a likely constitutional or statutory violation, thus raises grave constitutional concerns.

Here, the district court clearly took race into account in drawing its interim maps. In particular, the court deliberately created a number of "coalition" districts, in which multiple minority groups represent a combined majority of voters in a district. *See supra* at 19, 24. Indeed, by the court's own account, one such district was created solely

"[b]ecause much of the growth that occurred in the Dallas-Fort Worth metroplex was attributable to minorities." JA 146. In the absence of some finding that creation of those race-based districts was absolutely necessary to correct an actual or likely violation of law, the district court's actions were not only improper but unconstitutional.

D. The District Court's Interim Maps Improperly Punish Texas for Delays in the Preclearance Process Beyond Texas' Control

In addition to the legal errors described above, the practical effect of the interim orders is to punish Texas for delays that are entirely beyond the State's control. Texas filed its preclearance request the day after its congressional map was signed into law, and has done everything in its power to expedite and facilitate the preclearance process. *See supra* at 10–13. Yet Texas is subject to these far-reaching interim orders, not because its legislatively enacted maps have been found unlawful, but because the D.C. court has yet to rule on Texas' preclearance claims. Those delays were in many ways caused by the same parties who have challenged Texas' electoral maps in this case. *See id.*

Under the court-drawn interim maps, the challengers to Texas' map have effectively prevailed on the merits, even though there has been no finding that a single aspect of Texas' plan violates, or is even likely to violate federal law. The absurdity of the district court's approach is well illustrated by the court-drawn interim map for the upcoming Texas Senate elections. That map was supported by all but

two Texas Senators and a strong majority of the Texas House, and the Department of Justice has "asserted no objection to the plan" in the pending preclearance proceeding. JA 407. Nonetheless, solely because "the Legislature's enacted map has not been precleared," the Texas court found it necessary to alter the lines of five different Senate districts in order to restore the single challenged district to its prior configuration. JA 407–08 & n.2.

Put differently, the mere fact that one of only two Texas Senators to oppose the map self-servingly *alleged* that the district she represents was unlawfully redrawn—and intervened in the Section 5 proceeding—was enough for the district court to redraw five districts. And the court's interim congressional map alters *every single district* in Texas' plan, with no finding of any likely violation of law. *See* JA 152.

The resulting potential for gamesmanship is obvious. Opponents of a legislatively enacted plan can effectively win the case simply by alleging a violation and delaying the preclearance proceeding. That is exactly what has happened here. Two dozen parties—including many of the plaintiffs from the Texas case—have intervened in the preclearance proceeding. Those intervenors subsequently designated eleven expert witnesses, requested extensive discovery, and successfully obtained an extension of their response to Texas' motion for summary judgment, resulting in significant delays.

As long as the preclearance case remains pending, the plaintiffs have effectively won the case, as elections will be conducted under the highly

favorable, judicially drawn interim maps. And, once one round of elections is conducted under the judicially drawn interim maps, plaintiffs will have every incentive to argue (erroneously) that *that map*, rather than Texas' enacted map, should be treated as the benchmark against which future redistricting changes are assessed. *See* JA 184–85 (Judge Smith noting that, after winning interim maps, "[t]he plaintiffs then predictably will claim that the interim map ratchets in their favor by constituting a new benchmark for preclearance"). If this gambit succeeds here, it will become standard operating procedure for anyone who is dissatisfied with a legislatively drawn map, including legislators who were not successful in the lawmaking process. In practical effect, it will eliminate judicial preclearance as a viable option, even though it is one of two statutory avenues for discharging the onerous preclearance requirement.

E. Cases in which a Covered Jurisdiction Has Sought To Evade Its Preclearance Obligations Altogether Are Inapposite

Plaintiffs and the district court have argued throughout this proceeding that the district court properly drew its own "independent" interim maps—while giving no deference to the legislatively enacted maps—because Texas has not yet received preclearance of its new redistricting plans. In support of that argument, plaintiffs rely heavily on *Lopez v. Monterey County*, 519 U.S. 9, 21 (1996), *Clark v. Roemer*, 500 U.S. 646 (1991), and *McDaniel v. Sanchez*, 452 U.S. 130 (1981).

Those cases are inapposite, as they involved situations in which recalcitrant jurisdictions had attempted to avoid their preclearance obligations altogether. In *Clark*, this Court held that Section 5's "prohibition against implementation of unprecleared changes" required the District Court to enjoin an upcoming judicial election where "Louisiana had with consistency ignored the mandate of § 5." 500 U.S. at 654-55.

Relying on *Clark*, this Court held in *Lopez* that a covered jurisdiction may not hold elections under an unprecleared plan where it "did not preclear the ordinances as required by § 5," even though it had been on notice for "several years" that preclearance was required. 519 U.S. at 321; *see also id.* at 24 ("The County dismissed its declaratory judgment action before the District Court for the District of Columbia made any findings, and it has never submitted the consolidation ordinances to the Attorney General for review."). Similarly, in *McDaniel*, the Court held that the district court erred by adopting a county's permanent remedial plan "before it had been submitted to the Attorney General or the United States District Court for the District of Columbia." 452 U.S. at 153.

When a covered jurisdiction is clearly trying to evade the preclearance process altogether, a judicial remedy designed to incentivize that jurisdiction to seek preclearance makes perfect sense. But, when a jurisdiction is already actively pursuing preclearance, such a remedy is a *non sequitur*. Here, Texas, unlike the covered jurisdictions in *Clark*, *Lopez*, and *McDaniel*, filed a suit for judicial preclearance one day after its final redistricting map

was signed into law, and it has diligently litigated those claims before the D.C. court.

This Court emphasized in *Lopez* that "[t]he goal of a three-judge district court facing a § 5 challenge must be to ensure that the covered jurisdiction *submits its election plan to the appropriate federal authorities* for preclearance as expeditiously as possible." 519 U.S. at 24 (emphasis added). That has happened here. Accordingly, there is no basis for treating Texas the same as a jurisdiction that is attempting to shirk its obligations under Section 5.

II. DEFERENCE TO TEXAS' MAP AND APPLICATION OF TRADITIONAL EQUITABLE REQUIREMENTS ARE FULLY CONSISTENT WITH THE PRECLEARANCE PROCESS

A. Preliminary Likelihood-of-Success Rulings Would Not Interfere with the D.C. Court's Jurisdiction or Prejudice the Judicial Preclearance Action

Relying on *United States v. Board of Supervisors of Warren County*, 429 U.S. 642 (1977), and *Conner v. Waller*, 421 U.S. 656 (1975), the Texas court concluded that it was prohibited from giving any consideration to the merits of the plaintiffs' claims before redrawing Texas' electoral maps. *See* JA 96–99, 176. But that gets matters backwards. It cannot be that courts are free to impose sweeping injunctive relief, but cannot consider even the likelihood of success on the merits. Those cases simply hold that only the D.C. court may make a final determination

of whether a covered jurisdiction is eligible for preclearance.[9] Nothing in *Conner* or *Warren County* suggests that a district court is barred from making even a *preliminary* assessment of the plaintiffs' claims before rewriting a legislative map. Such a rule would be absurd—and flatly contrary to settled principles of equitable relief.

The district court also asserted that there would be a risk of "inconsistent factual findings and determinations" if it were required to evaluate the plaintiffs' likelihood of success on the merits while the preclearance proceeding remained pending. JA 98. But just as the "interim" map does not obviate the need for judicial preclearance, the determination concerning a likely violation is different from and does not displace the ultimate decision whether preclearance should be granted (or denied) on a permanent basis.

Nor do considerations of judicial economy support the Texas court's approach. In crafting its "independent" interim maps, the Texas court held a two-week trial and a three-day hearing and compiled a massive evidentiary record. JA 100. Indeed, under a properly restrained approach, the district court is likely to *save* resources because its inquiry is

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[9] In *Warren County*, a district court in Mississippi expressly concluded that the challenged districting plan "will not lessen the opportunity of black citizens of Warren County to participate in the political process." 429 U.S. at 646. Similarly, in *Connor*, the district court "erred in *deciding the constitutional challenges* to the Acts based upon claims of racial discrimination." 421 U.S. at 656 (emphasis added).

a narrowly focused and quintessentially judicial one. It need not conscript legislative resources to draw independent maps or assess "the collective public good." Instead, it need only focus on whether the familiar four-factor test for preliminary injunctive relief is satisfied.

B. A Properly Restrained Approach to Interim Relief is Consistent with Section 5

The proper procedures for interim relief described above are entirely consistent with Section 5 and its reversal of the normal presumption that legislative changes take immediate effect. Allowing an election to go forward on an interim basis while preclearance is pending is not the same as *granting* preclearance, and in no way eliminates the requirement that the State obtain preclearance. Texas has never disputed that it must obtain preclearance from the D.C. court before implementing its legislatively enacted maps on a *permanent* basis.

For most voting changes subject to Section 5, the need for an interim remedy simply does not arise: the assumption is that, absent preclearance, the pre-existing policy will continue to govern. The need for an "interim" order only arises when the pre-existing policy or map is unusable and the proposed change has not yet been precleared. This situation arises infrequently, and the VRA does not expressly address such "interim" orders. But the regulations promulgated by DOJ under the VRA expressly recognize that federal courts may need to authorize the "emergency interim use without preclearance of

a voting change." 28 C.F.R. § 51.18(d). At the same time, that provision makes clear that judicial imposition of an unprecleared plan on an interim basis does not obviate the need for preclearance to use that change on a permanent basis. *See id.* (noting that interim use of an unprecleared change "does not exempt from § 5 review any use of that practice not explicitly authorized by the court"). Thus, there is no conflict between Section 5's preclearance requirement and the use of the legislative map only as an "interim" map.[10]

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[10] While the VRA does not expressly address what happens when a pre-existing practice is unusable and a new change has not been precleared, Congress has addressed the situation in which a State is allocated additional seats and an election must take place before a new congressional map can be drawn. While Congress has directed that districted elections take place wherever possible, *see* 2 U.S.C. § 2c, in a true exigency, Congress has provided that the new seats should be filled through an at-large election. *See id.* § 2a(c); *Branch*, 538 U.S. at 275 (plurality op.). *Branch* reconciled those provisions by concluding that they governed judicial as well as legislative redistricting. That conclusion depended on the assumption that judicial redistricting is conducted in the manner provided by state law—*i.e.*, that judicial redistricting is governed by the "'policies and preferences of the State, as expressed in,'" among other things, "'the reapportionment plans proposed by the state legislature,'" except to the extent the latter is unconstitutional.'" *Id.* (quoting *White v. Weiser*, 412 U.S. at 795). The Texas court's decision to draw an independent map that disregarded the legislative plan without a finding of any constitutional difficulty conflicts with this basic assumption of *Branch*.

III. THIS COURT SHOULD ORDER THE INTERIM USE OF THE LEGISLATIVELY ENACTED PLAN OR, AT A MINIMUM, PROVIDE ADDITIONAL GUIDANCE TO THE DISTRICT COURT ON REMAND

A. This Court Should Order the Use of Texas' Legislatively Enacted Map as the Interim Map While Preclearance is Pending

Texas' 2012 elections have already been delayed by agreement of the two major political parties. JA 80–81. Even the deadlines contained in that carefully crafted agreement, however, are rapidly approaching. Candidates for office need to know the borders of the districts in which they will be running. Voters need to know who their candidates will be. Election officials need to print and mail absentee and overseas ballots. And, in order for the primaries to go forward on April 6, 2012, as agreed to by the political parties, usable redistricting maps must be in place by February 1, 2012. JA 80–81, 85. Especially for the presidential primaries, any further delays will significantly diminish the role of the nation's second-largest State in choosing the parties' presidential candidates.

In light of these exigencies, there simply does not appear to be enough time to remand the case and allow the district court to craft yet another batch of interim maps for the upcoming elections. Accordingly, this Court should vacate the interim orders and remand to the district court with instructions to impose Texas' legislatively enacted

plan as the interim plan while preclearance is pending.

As explained above, a federal court clearly has authority to authorize the emergency interim use of a State's legislatively enacted redistricting plan without first obtaining preclearance. *See* 28 C.F.R. § 51.18(d); *Johnson v. Mortham*, 926 F. Supp. 1460, 1494 (N.D. Fla. 1996) (authorizing use of an unprecleared plan "on an emergency interim basis for the 1996 congressional elections," although "[t]he Florida legislature will be required to obtain Section 5 preclearance for the use of such a plan for any elections after 1996").

Texas' already-delayed 2012 primary elections are rapidly approaching, and the State desperately needs clear guidance about the maps under which those elections will be conducted. And, despite months of litigation in two different district courts, there has been no finding that any aspect of Texas' legislatively enacted districting plans violates, or is likely to violate, federal law. Accordingly, this Court should order those plans to go into effect on an immediate, interim basis. That order, of course, would not relieve Texas of its obligation to seek and obtain preclearance before implementing its new maps on a permanent basis.

B. At a Minimum, This Court Should Provide Additional Guidance for the District Court on Remand

If this Court does not order the use of Texas' legislatively enacted plan as an interim map while preclearance is pending, it should not only underscore that the legislative map is the

appropriate starting point to be modified only if and to the extent that traditional equitable principles are satisfied, but also provide additional guidance to the district court so that the court does not repeat the same errors on remand. *See* JA 204 (Judge Smith expressing "hope that, on appeal, the Supreme Court will provide appropriate and immediate guidance"). In addition to the broad methodological errors described above, if the district court is required to craft another round of interim maps on remand, it is clearly in need of this Court's guidance in at least four respects.

1. The District Court Improperly Allocated Additional Congressional Seats in Proportion to Race

In the interim congressional order, the district court modified the legislatively enacted map to add an entirely new "minority coalition opportunity district" (District 33) because "much of the growth that occurred in the Dallas-Fort Worth metroplex was attributable to minorities." JA 146–47. The court also complained that the number of "minority opportunity districts" in the legislatively enacted Texas House plan did not reflect statewide Hispanic population growth. JA 173. The court apparently believed that Texas had an obligation to draw a certain number of minority opportunity districts in proportion to each racial group's share of the increase in population.

But proportionality cannot justify this alteration of the electoral map, as the VRA explicitly rejects any right to proportional representation. *See* 42 U.S.C. § 1973(b) ("[N]othing in this section

establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."). And, of course, a State's failure to *maximize* minority voting strength does not violate the VRA. "One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast." *Johnson v. DeGrandy*, 512 U.S. 997, 1017 (1994).

This Court should clarify on remand that a district court drawing an interim map while preclearance remains pending may not alter the legislatively enacted districting plan based on proportional-representation concerns or to maximize minority voting strength.

2. The District Court Incorrectly Believed It Was Required To Create Coalition Districts

In addition to District 33, the Texas court also purposefully created a number of additional "coalition districts," in which multiple minority groups are combined in an effort to form multi-ethnic, minority-controlled districts. For example, the court created a new congressional district in North Texas in which African-Americans (29.1%), Latinos (21%), and Asians (6%) constitute a combined majority of voting-age citizens. *See* Tex. Leg. Council, Plan C220, Red 106 Report. Similarly, the interim House order created two House districts (Districts 26 and 54) and re-created a third (District 149), in which three minority groups are a combined majority of voters. *See* JA 104–05, 200–01.

It is well established, however, that the VRA requires creation of a majority-minority district only when, *inter alia*, the minority group claiming vote dilution is "sufficiently large and geographically compact to create a majority in a single-member district," and is "*politically cohesive*." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986) (emphasis added); *cf. Bartlett v. Strickland*, 129 S.Ct. 1231, 1243 (2009) (noting that nothing in § 2 of the VRA "grants special protection to a minority group's right to form political coalitions"). Even assuming Section 2 could *ever* require the creation of a coalition district, there is simply no evidence in the record suggesting that African-American, Latino, and Asian citizens form the kind of sufficiently cohesive voting blocs this Court required in *Gingles*. *See* JA 152.[11] Indeed, even the plaintiffs' evidence conclusively points to

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[11] It is far from clear that minority coalition districts could ever meet the first *Gingles* requirement that the minority group be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50-51. *Gingles* was clearly addressing a situation in which a State diluted the vote of a *single* minority group. This Court held in *Bartlett* that Section 2 does not require the creation of "crossover" districts, in which minority groups are able to elect their candidate of choice with assistance from some majority voters. 129 S.Ct. at 1242-46. The Court had no occasion to address coalition districts in *Bartlett*, *id.* at 1243, but its reasoning strongly suggests that coalition districts, like crossover districts, are not required by the VRA, *see id.* at 1244 (noting that recognition of claims for refusal to create crossover districts "would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions").

the opposite conclusion—that those citizens do not vote cohesively.[12]

This Court should make clear that, particularly in the absence of a strong showing of political cohesiveness, a district court may not alter the lines of a legislatively enacted redistricting plan to create additional "coalition" districts. As this Court has explained, "Section 5 gives States the flexibility to choose" whether to accommodate minority voters through coalition districts or more traditional majority-minority districts. *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003). Indeed, the district court's efforts to increase the number of coalition districts in the Interim House Order actually *decreased* the number of majority African-American districts, from three to one. Creation of coalition districts may be sound as a matter of policy, *see id.* at 481, but the proper locus of such policymaking is in state legislatures, not federal courts.

3. The District Court Improperly Disregarded the Texas Constitution's County Line Rule

The Texas court's interim maps also subordinate traditional districting principles to racial considerations. For example, the Texas

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[12] *See* Trial Tr. at 265:15-18 (plaintiffs' expert Dr. Morgan Kousser stating Latinos and African Americans are not cohesive in the Democratic primary elections); *id.* at 506:3-508:5 (plaintiffs' expert Dr. Richard Engstrom stating African-Americans are the "least likely group to support Latinos in a Democratic primary").

Constitution's "county-line rule" provides that districts for the Texas House must be apportioned by county so as to avoid crossing county lines, except where necessary to apportion excess population from one county into a neighboring county. TEX. CONST., art. III, § 26. This rule has been in the Texas constitution, without alteration or amendment, since its enactment in 1876.

Had the district court followed this rule, it would have apportioned two House seats to Nueces County, which could have accommodated two seats within the county lines. *See* Trial Tr. at 1429:17-21. Yet the district court disregarded the county-line rule in an apparent attempt to create two new Latino-majority districts.

This Court has repeatedly cautioned that such subordination of traditional redistricting considerations to racial considerations raises grave constitutional concerns under the Equal Protection Clause. *See, e.g., Shaw v. Hunt*, 517 U.S. 899, 906-07 (1996) (holding that race-based redistricting plan violated the Equal Protection Clause because it was not narrowly tailored to addressing a compelling state interest). Those concerns apply with even greater force here, where the district court imposed an explicitly race-based remedy without any finding that this remedy was necessary to address an actual or likely violation of law. This Court should make clear that traditional, race-neutral redistricting principles such as Texas' constitutional county-line rule should never be subordinated to race-based considerations, particularly when district courts engage in the delicate task of imposing interim redistricting plans.

4. The District Court Improperly Equalized Population Across Districts

Finally, the Texas court's wholesale revisions of the Texas House map often reflect no conceivable purpose other than to reduce the differences in total population across districts. JA 170–72. But the population deviations in the enacted plans are no greater than 10%, and are thus presumptively consistent with one-person-one-vote requirements. *See Brown v. Thomson*, 462 U.S. 835, 842 (1983). Small population deviations, such as these, "may be necessary to permit the States to pursue other legitimate objectives such as 'maintain[ing] the integrity of various political subdivisions' and 'provid[ing] for compact districts of contiguous territory.'" *Id.* (citation omitted).

The district court held that court-drawn plans, unlike legislatively enacted plans, may include only *de minimis* variations from absolute population equality. JA 115–16. It is true that courts are generally subject to a stricter standard of population equality when they draw electoral districts on a blank slate. *See Chapman v. Meier*, 420 U.S. 1, 27 (1975). But this Court has emphasized that the stricter standard applies "only to the remedies *required by the nature and scope of the violation*," and does not "come into play" at all "until and unless a remedy is required." *Upham*, 456 U.S. at 42 (emphasis added). Here, of course, the district court made no finding that imposition of greater population equality was "required" in order to remedy an actual or potential violation of the one-person-one-vote doctrine—and no such finding would

have been justified given the presumptively valid population deviations in the legislatively enacted plans.

CONCLUSION

The district court's interim orders should be vacated, and the case remanded with instructions that the district court order the use of Texas' legislatively enacted districting maps as the interim plans while preclearance is pending.

Respectfully submitted,

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December 21, 2011

APPENDIX

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U.S. CONST., AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or

military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

SECTION 2 OF THE VOTING RIGHTS ACT
42 U.S.C. § 1973

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

SECTION 5 OF THE VOTING RIGHTS ACT
42 U.S.C. § 1973c

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or

abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in

accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

28 C.F.R. § 51.18
Court-ordered changes.

(a) In general. Changes affecting voting for which approval by a Federal court is required, or that are ordered by a Federal court, are exempt from section 5 review only where the Federal court prepared the change and the change has not been subsequently adopted or modified by the relevant governmental body. *McDaniel v. Sanchez*, 452 U.S. 130 (1981). (See also § 51.22.)

(b) Subsequent changes. Where a Federal court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction remain subject to preclearance. For example, voting precinct and polling changes made necessary by a court-ordered redistricting plan are subject to section 5 review.

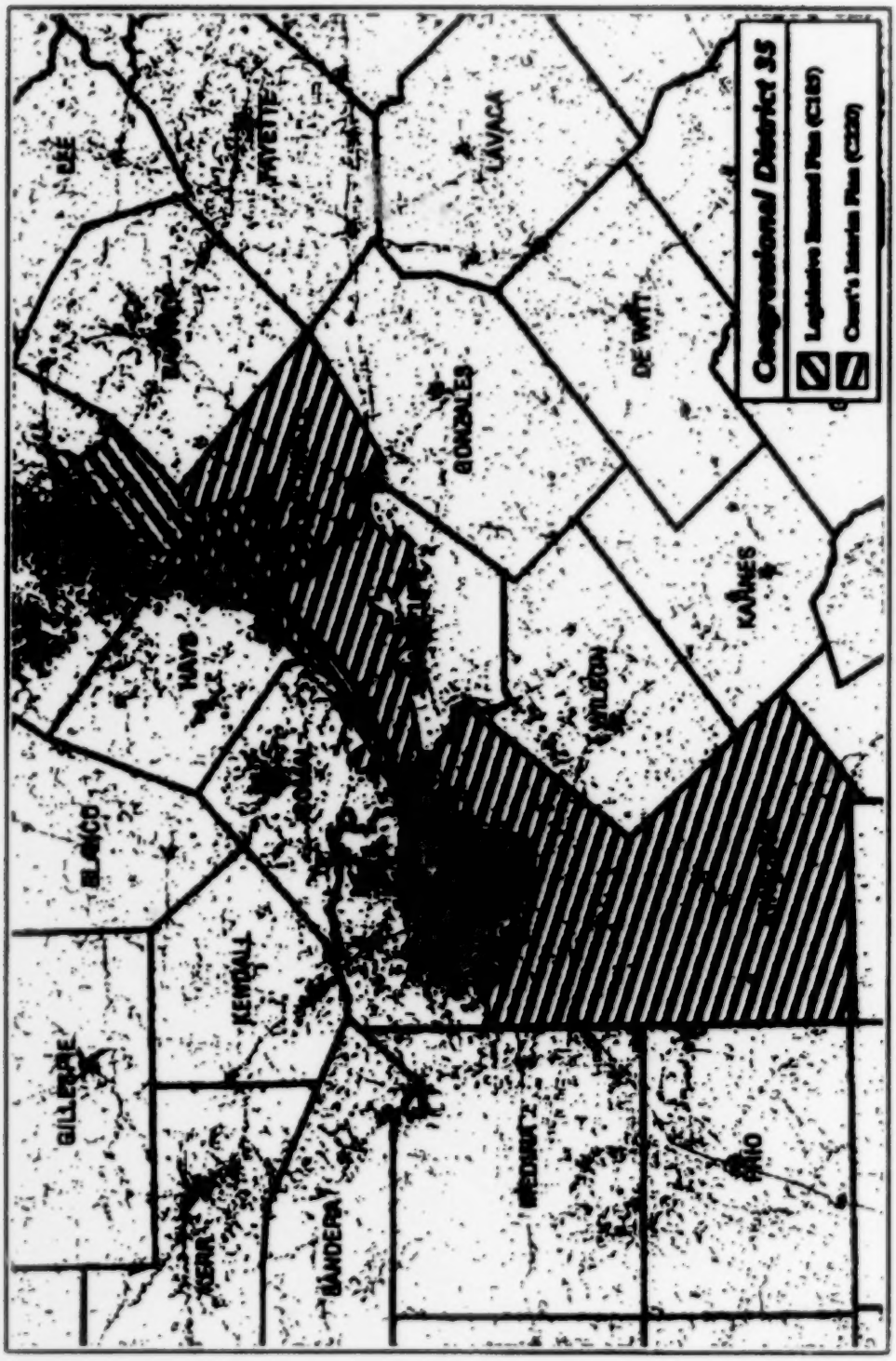
(c) Alteration in section 5 status. Where a Federal court-ordered change at its inception is not subject to review under section 5, a subsequent action by the submitting authority demonstrating that the change reflects its policy choices (e.g., adoption or ratification of the change, or implementation in a manner not explicitly authorized by the court) will render the change subject to review under section 5 with regard to any future implementation.

(d) In emergencies. A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of that practice not explicitly authorized by the court.

TEX. CONST. ART. III § 26

Sec.26. APPORTIONMENT OF MEMBERS OF HOUSE OF REPRESENTATIVES. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

Congressional District 20
Legislative Remedial Plan (C185)
Court's Interim Plan (C220)


Congressional District 35
Legislative Council Plan (C185)
Court's Interim Plan (C238)
BEE
FAYETTE
LAVACA
GONZALES
DE WITT
KARNES
WILSON
BLANCO
HAYS
KENDALL
GILLESPIE
KERR
BANDERA
MEDINA
ATASCOSA

APPELLEE'S BRIEF

Nos. 11-713, 11-714, 11-715

IN THE

Supreme Court of the United States

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.

Appellants,

v.

SHANNON PEREZ, ET AL.

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.

Appellants,

v.

WENDY DAVIS, ET AL.

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.

Appellants,

v.

SHANNON PEREZ, ET AL.

Appellees.

On Appeal from the United States District Court for the Western District of Texas

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BRIEF OF APPELLEES WENDY DAVIS, LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.

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QUESTIONS PRESENTED

Whether a three-judge panel in the United States District Court for the Western District of Texas properly implemented an interim plan so that the voters of Texas could elect candidates to the State Senate in 2012, where – as a result of the State's own delay – no preclearance decision under Section 5 of the Voting Rights Act had yet been made with respect to the State's legislatively enacted plan by the time the election process was beginning.

Whether, in implementing that interim plan, the panel properly refused to adopt wholesale the State's legislatively enacted State Senate plan and instead implemented a plan in which it restored to its original configuration the Senate district that was the focus of the preclearance proceedings in the United States District Court for the District of Columbia.

LIST OF PARTIES

Appellants in Case No. 11-714 regarding the State Senate plan are Rick Perry, Governor of Texas; Hope Andrade, Secretary for the State of Texas; Boyd Richie, Chair of the Texas Democratic Party; Steve Munisteri, Chair of the Texas Republican Party; the Texas Democratic Party; and the State of Texas. Appellees in Case No. 11-714 regarding the State Senate plan are Wendy Davis; Marc Veasey; Roy Brooks; Vicki Bargas; Pat Pangburn; Frances De Leon; Dorothy DeBose; Sarah Joyner; and the League of United Latin American Citizens.

CORPORATE DISCLOSURE STATEMENT

Appellees are individuals, with the exception of Appellee League of United Latin American Citizens ("LULAC"), a 501(c)(3) organization. LULAC has no parent company and issues no stock.

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OPINIONS BELOW

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JURISDICTION

The three-judge District Court's opinion and order issuing an interim map was entered on November 23, 2011. This Court's jurisdiction is invoked under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 5 of the Voting Rights Act is attached hereto in Davis App.

INTRODUCTION

Appellees Wendy Davis, Marc Veasey, Roy Brooks, Vicki Bargas, Pat Pangburn, Frances De Leon, Dorothy DeBose, Sarah Joyner (the "Davis Appellees") and the League of United Latin American Citizens ("Appellee LULAC") file this brief in support of the interim map for the State Senate drawn by the three-judge panel in *Davis v. Perry*, Case No. 5:11-cv-00788-OLG-JES-XR, currently pending in the Western District of Texas.

Because the legislatively enacted Senate map was not precleared as required under Section 5 of the Voting Rights Act by the time the 2012 election process was beginning, the three-judge panel had an obligation to provide an interim district map that would allow voters in Texas to choose their elected state senators in 2012. The panel was precluded by law from simply authorizing the State to use its legislatively enacted map prior to preclearance. The panel therefore decided to impose an interim map that (1) reflected the policy choices of the State Legislature in its enacted Senate plan in most of the State, but (2) relied on the benchmark 2001 plan in drawing the district in the Tarrant County area that was the subject of the Section 5 preclearance proceedings pending in the United States District Court for the District of Columbia. These rulings are unimpeachably correct.

That the three-judge panel was put in a position where it had to impose an interim map at all is entirely the fault of the State of Texas. The State waited until the very end of the 2011 legislative

session to take up redistricting, delayed the submission of its redistricting plans for preclearance, deliberately chose to bypass the more expeditious alternative of administrative preclearance and instead initiated a declaratory judgment action in the United States District Court for the District of Columbia, and then failed to take any action to expedite the preclearance proceedings. In fact, the State affirmatively caused delays in those proceedings. For example, it refused the D.C. District Court's offer of an early trial date, choosing instead to move ahead with a motion for summary judgment on a record that was replete with genuine issues of material disputed fact about the State's discriminatory intent in enacting its redistricting plans. Given that the redistricting plan at issue is infected with racially discriminatory purpose and has retrogressive, discriminatory effects, it was hardly capable of summary disposition.

The State nonetheless claims that the district court erred by not simply ordering into effect the very plan that was the subject of the preclearance proceedings in the D.C. District Court. But to do so would have been to contravene decades of precedent from this Court and to render the Section 5 preclearance process a nullity. Nothing in *Upham v. Seamon* – the case upon which the State places such great reliance – changes this analysis. In sum, the court below did exactly what it was supposed to do when put in the difficult situation that Texas itself created.

STATEMENT OF THE CASE

The State of Texas is no stranger to this Court when it comes to problems with its redistricting process. Indeed, just a few years ago, this Court noted the "long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process" in Texas. *LULAC v. Perry*, 548 U.S. 399, 439 (2006) (internal quotation marks omitted). And this Court found that Texas had continued that discrimination by taking away a Latino opportunity district just as Latinos were about to exercise their political power to elect a candidate of choice. *See id.* at 440. The Court observed that such an action "bears the mark of intentional discrimination that could give rise to an equal protection violation." *Id.*

Here we are again. Apparently paying no heed to anything this Court said in *LULAC v. Perry*, Texas has adopted redistricting plans that bear every mark of intentional discrimination. The State Senate plan deliberately and systematically dismantles an effective majority minority district – Senate District 10 – and fractures its population such that it is subsumed into four districts controlled by Anglos. Texas has submitted that deeply flawed plan to the United States District Court for the District of Columbia for preclearance and the court thus far has refused preclearance, denying the State's motion for summary judgment and finding that the State used the wrong standard or methodology to determine which districts afford

minority voters the ability to elect their preferred candidates of choice. A trial will soon begin in the D.C. District Court, and for the reasons set forth herein, it is entirely possible that the State Senate map will never receive preclearance. But as the Texas court below recognized, that preclearance determination was not its to make.

I. The Dismantling of Senate District 10 in the 2011 Senate Plan

In the benchmark 2001 plan, Senate District 10 combines almost every African-American and Hispanic neighborhood in the City of Fort Worth, along with some nearby predominantly minority suburbs. In its 2001 filing with the Department of Justice seeking preclearance of the 2001 Senate district map, Texas justified the configuration of District 10 as follows:

> District[] 10 contain[s] significant minority communities that are essentially kept intact within [the] district. The voting strength of these minority communities in the future will depend on the cohesion within and between Black and Hispanic voters and the ability of such voters to form coalitions with other racial or ethnic groups in support of their preferred candidates.

Tex. 2001 Preclearance Submission at 18, J.A. 451.

By the time of the 2008 elections, the voters of District 10 formed just the kind of effective coalition that the State had predicted. African-American and Hispanic leaders decided to make a concerted effort

to elect a preferred candidate and settled on Appellee Wendy Davis. *See* Cmsr. Brooks Decl. ¶¶ 3-5, J.A. 467; Rep. Veasey Decl. ¶¶ 6-8, J.A. 461-63; Chairman Richie Aff. at 2-3, J.A. 474-75; Sen. Davis Decl. ¶ 3, J.A. 497-98 (¶ 15). Davis was able to win the Democratic primary and eventually won election to the Texas Senate, garnering the vast majority of votes cast by African-Americans and Hispanics, but only a small fraction of votes cast by Anglo voters. This reality was documented in the expert report of Dr. Allan Lichtman, which was filed with the San Antonio district court that ultimately drew the district map at issue in this appeal. *See* Lichtman Report at 2-3, 5-6; J.A. 477-78, 480-81.

When Senate District 10 was drawn in the 2001 redistricting cycle, it was a majority Anglo district: 56.6% Anglo, 16.7% African American and 22.9% Hispanic. *See* Compl. ¶ 32, J.A. 419. But throughout the last decade, the minority population in the District grew dramatically, while the Anglo population significantly decreased as a percentage of the District. Between 2000 and 2010, the total Anglo population in Dallas and Tarrant counties declined by more than 156,000, whereas the Latino population in that two-county area grew by more than 440,000, and the African-American population in that area grew by more than 152,000. *See id.* ¶ 33, J.A. 420. By the end of the decade, Senate District 10's minority population had increased by 9 percentage points and its Anglo population percentage had fallen by 9 percentage points. *See id.*

Thus, following the 2010 census, Anglos no longer comprised a majority of Senate District 10's total population. *See id.* That census recorded the population of the district as 28.9% Latino, 19.2% African-American, and 47.6% Anglo.

In drawing the Senate plan based on the 2010 Census data, state legislative leaders knew that Senate District 10 had become majority-minority in population, acknowledged that Senator Davis was minority voters' candidate of choice in 2008, and were warned that dismantling Senate District 10 would harm minority voting rights. *See, e.g.*, Letter from Sen. Davis to Sen. Seliger (May 10, 2011), J.A. 532-35; Statement of Democratic Senators (May 17, 2011), J.A. 536-38; *see also* Sen. West Decl. ¶ 2, J.A. 522-23; Sen. Zaffirini Decl. ¶ 7, J.A. 519. In the face of all this, they adopted a plan that intentionally eliminated Senate District 10 as a minority opportunity district, dramatically changing the District's demographic makeup and fracturing its minority population into districts scattered across North Texas.

The new plan added 58,846 Anglos to the District, while removing 61,562 African-Americans and Hispanics, raising the Anglo percentage to 54.4% (from the benchmark of 47.6%), lowering the African-American voting age population from 17.9% to 13.4%, and lowering the Hispanic voting age population from 24.8% to 22.1%. *See* Compl. ¶ 37, J.A. 421. Thus, the State's Senate plan was drawn to ensure that minority population gains from 2000 to

2010 in the Dallas-Tarrant County region of North Texas would not result in minority electoral gains.

That plan was created as a result of a legislative process that completely shut out minority legislators and was infected with discriminatory intent. *See* Lichtman Report at 9-14, J.A. 484-92. The twelve senators representing minority opportunity districts – including those serving on the Redistricting Committee – were not even *shown* the proposed configuration of their *own districts* until the plan was finalized, despite repeated requests. *See* Sen. West Decl. ¶ 3, J.A. 523; Sen. Zaffirini Decl. ¶ 5, J.A. 519; Sen. Ellis Decl.¶ 8, J.A. 529; Sen. Davis Decl. ¶¶ 9-13, J.A. 500, 502 (¶¶ 21, 25). In stark contrast, State leaders provided senators who represented majority Anglo districts with "open and continued access to the redistricting process for weeks leading up to the formal consideration of the map." *See* Sen. Zaffirini Decl. ¶5, J.A. 519; *see also* Sen. West Decl. ¶ 3, J.A. 523. That kind of differential treatment led Senator Judith Zaffirini, a Latina representing a majority minority district, to describe the process as "the least collaborative and most exclusive of any [she] ha[d] experienced" in her 25 years of service. *See* Sen. Zaffirini Decl. ¶¶ 2-3, J.A. 518. And it leaves little doubt that State leaders purposefully prevented senators who represented majority minority districts from having any meaningful input into the creation of the Senate plan. *See* Sen. Zaffirini Decl. ¶¶ 5-6, J.A. 519; *see also* Sen. West Decl.¶ 3, J.A. 523; Sen. Ellis Decl. ¶¶ 3-8, 11, J.A. 527-30.

The senators representing minority opportunity districts repeatedly raised concerns both about this discriminatory process, as well as the retrogressive proposal that was its result. *See, e.g.*, Letter from Sen. Davis to Sen. Seliger (May 10, 2011), J.A. 532-35; Statement of Democratic Senators (May 17, 2011), J.A. 536-38; *see also* Sen. West Decl. ¶ 2, J.A. 522-23; Sen. Zaffirini Decl. ¶ 7, J.A. 519. Those concerns were ignored as senators representing Anglo districts performed their redistricting work behind closed doors.[1]

Despite being effectively shut out of the process, minority senators nonetheless attempted to present several non-retrogressive alternative maps that would not have dismantled District 10. With little notice before committee hearings were held, and without an adequate opportunity to review the proposed map, minority members of the Senate and House redistricting committees offered alternative plans both during committee hearings and on the Senate and House floors. *See, e.g.*, Lichtman Report at 7-8, J.A. 483; *see also* Sen. Zaffirini Decl. ¶ 7, J.A. 519; Statement of Democratic Senators (May 17,

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[1] Contrary to previous procedure, State officials also effectively excluded the public from the process. They held a single public hearing covering the Senate plan, but they failed to provide adequate advance notice to the public. They also did not hold any public hearings outside of the State Capitol in Austin, as they had done in prior years. *Compare* Sen. Zaffirini Decl. ¶ 4, J.A. 518-19; Lichtman Report at 13, J.A. 491 (describing process used in adopting the 2011 plan) *with* Tex. 2001 Preclearance Submission at 4-5, J.A. 444-46 (describing process used in adopting benchmark 2001 plan).

2011), J.A. 536-38. In each instance, the alternative plans received overwhelming support from members who represented minority opportunity districts. And in each instance, these alternatives were rejected by the Anglo majority.

This discriminatory process resulted in a retrogressive map that intentionally fractures and dismantles the coalition of African-American and Hispanic voters in Senate District 10. Even though State leaders in 2001 held up Senate District 10 as a district that would present minority voters with an opportunity to elect their candidate of choice by the end of the decade, they chose to dismantle it as soon as minority voters had succeeded in electing their preferred candidate. *Compare* Tex. 2001 Preclearance Submission at 18, J.A. 451, *and* Sen. Davis Decl. ¶¶ 17-23, J.A. 504-06 (¶¶ 29-35); Rep. Veasey Decl. ¶¶11-13, J.A. 464-65; Cmsr. Brooks Decl. ¶10, J.A. 469; Chairman Richie Aff. at 3, J.A. 475; Racial Shading Map of Plan S100 (Benchmark), M.J.A. 74;[2] Racial Shading Map of Plan S148, M.J.A. 78; Map Comparing Changes to Senate District 10, M.J.A. 75.

The State's map divides the minority communities that were the cornerstone of District 10 and, in many instances, had remained together in a Senate District for generations, joining them with predominantly Anglo rural, suburban, and exurban populations. *See* Sen. Davis Decl. ¶¶ 17-23, J.A. 504-

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[2] The Map Joint Appendix ("M.J.A.") is the oversized volume of the Joint Appendix containing maps presented in this proceeding.

06 (¶¶ 29-35); Rep. Veasey Decl.¶¶ 11-13, J.A. 464-65; Cmsr. Brooks Decl. ¶ 10, J.A. 469; Chairman Richie Aff. at 3, J.A. 475. The large African-American neighborhoods in District 10 comprise the third largest concentration of African-Americans in Texas. *See* Rep. Veasey Decl. ¶ 3, J.A. 460; Letter from Sen. Davis to Sen. Seliger (May 10, 2011) at 1, J.A. 532. Yet these historical communities of interest were attached as a northern appendage to rural-based District 22, which extends more than 100 miles south and is dominated by rural Anglo voters who have no shared interests with African-Americans in Fort Worth or any part of Tarrant County. *See* Plan S148 Map, M.J.A. 72; Racial Shading Map of Plan S148, M.J.A. 79. While the Senate official who drew the State's Senate map claimed that one of the State's criteria was the protection of communities of interest, the State plainly violated this principle in splitting defined communities of interest to redraw Senate District 10. *See* Doug Davis Tr. (Oct. 18, 2011) at 27:11-34:17, J.A. 507-17.

Thus, the legislature subsumed minority communities into surrounding Anglo communities to ensure that minority voters would be unable to elect a candidate of choice anywhere in the Fort Worth area. *Compare* Racial Shading Map of Plan S100 (Benchmark), M.J.A. 78 *and* Racial Shading Map of Plan S148, M.J.A. 79; *see also* Sen. Davis Decl. ¶¶17-23, J.A. 504-06 (¶¶29-35); Rep. Veasey Decl. ¶¶ 11-13, J.A. 464-65; Cmsr. Brooks Decl. ¶ 10, J.A. 469; Chairman Richie Aff. at 3, J.A. 475. Instead, the growing minority population in the Tarrant County

area is likely to be represented by senators who, in the past, have been "outright hostile" on issues of particular concern to minority citizens. *See* Constable De Leon Decl. ¶ 9, J.A. 458. The direct impact of these changes on minority voters is evident from the contrast between the positions Senator Davis has taken on issues that are critical to the minority voters in District 10 and the positions taken by the Senators representing the districts into which those minority voters have been submerged in the legislature's plan. *See* Sen. Davis Decl. ¶¶ 7, 21, J.A. 499-500, 505-06 (¶¶ 19, 33). For example, Senator Davis has taken an active leadership role in opposing cuts to funding in public schools, efforts to end payday lending, and blocking a Voter Photo ID bill. *Id.* ¶ 7, J.A. 499-500 (¶ 19). In contrast, the Anglo senators representing the surrounding districts in which minority neighborhoods from District 10 were reassigned supported the opposite positions. *Id.*, J.A. 499-500 (¶ 19); *see also id.* ¶ 21, J.A. 505-06 (¶ 33).

Given the intentionally discriminatory process and the discriminatory effects of the new map for minority communities, *all* of the minority senators and *all* of the Democratic senators in the Texas Senate issued a public statement opposing the State's Senate plan before its final passage. *See* Statement of Democratic Senators (May 17, 2011), J.A. 536-38. Though many of these Senators ultimately voted for the Senate plan, they did so under protest and only to prevent a legislative deadlock on the State Senate map that would have resulted in the map being drawn by an all-Anglo, highly partisan five-member body (the Legislative

Redistricting Board) appointed under State law. As African-American State Senator Rodney Ellis explained: "[m]any Senators feared, with justification, that this harshly partisan body of statewide elected officials would dismantle not only District 10 but other minority opportunity districts as well." Sen. Ellis Decl.¶ 5, J.A. 528. Thus, the Senate map was enacted under protest on May 23, 2011.

II. The State's Choice to Slow the Preclearance Process in the District Court for the District of Columbia

That the Senate plan was not enacted until May 23, 2011 was surprising. The State of Texas convened its legislative session in January 2011, and received redistricting data from the United States Census Bureau in February 2011. Yet, the State Legislature delayed consideration of redistricting until the very end of the session. This delay was not the result of partisan gridlock because any redistricting plan was assured passage since the State of Texas has unified Republican control of both houses of the State Legislature and the governorship.

Indeed, the delay is inexplicable given that State Legislature knew all the while that Texas has some of the earliest candidate qualifying deadlines and primaries in the country. In fact, due to new requirements to process and mail military ballots well in advance of the primary election date, the Legislature considered moving the Texas primary from March 6, 2012 to a later date in April. The

State's leadership, however, rejected this option and retained the early primary date, moving up the candidate qualifying deadlines from December to November 2011.

Even more inexplicable is the fact that the Senate map, once enacted, then sat on Governor Perry's desk for almost another month after passage. The Governor finally signed the Senate plan into law on June 17, 2011. Then, yet another month passed before the State decided to submit the Senate plan (along with the House and Congressional plans) for preclearance on July 19, 2011.

In submitting its redistricting plans for preclearance, the State of Texas faced three choices:

First, it could have chosen to submit its plans to the Department of Justice for administrative preclearance. Upon submission, the Department would have had 60 days to object to the plans. If no objection was made, the plans would have become law. This Court has described administrative preclearance with the Department as the more "expeditious alternative." *Morris v. Gressette*, 432 U.S. 491, 504 (1977) (Congress established the administrative preclearance process through the Department of Justice in order to provide "an expeditious alternative to declaratory judgment actions" in the District Court for the District of Columbia); *see also Allen v. State Bd. of Elections*, 393 U.S. 544, 549 (1969) (noting that the alternative procedure of submission to the Attorney General "gives the covered State a rapid method of rendering a new state election law enforceable"). Texas

deliberately chose not to take the more expeditious alternative.

Second, Texas could have chosen to submit its plans to the Department of Justice, while simultaneously initiating a declaratory judgment action in the District Court for the District of Columbia. Under this option, if the Department of Justice precleared the plans within 60 days, the declaratory judgment action would have become moot; if the Department objected, the District Court could still preclear the plans and would have already begun its work. Indeed, this is the option North Carolina, Louisiana, and other states pursued in 2011 with respect to their recently enacted redistricting plans. In all of these cases, the Department precleared the plans within the 60-day statutory window. Texas deliberately chose not to take this more expeditious alternative either.

The third option is the one Texas chose: initiating a declaratory judgment action in the District Court for the District of Columbia, without any attempt to obtain preclearance from the Department of Justice. The only explanation for such a choice is that Texas knew that it could not possibly obtain preclearance on its House, Senate, and Congressional plans from the Department of Justice. It was therefore rolling the dice that it would get a panel in the D.C. District Court that would rubberstamp its plans over a Department of Justice objection, or perhaps hoping that the passage of time might allow it to avoid preclearance altogether if this Court or another court held Section

5 constitutionally infirm. But Texas's gamble has not paid off.

In any event, it is clear that since initiating the declaratory judgment action in the D.C. District Court, Texas has made every effort to slow down the process. It filed its complaint without seeking to shorten the time (60 days) for the Department of Justice to file its answer; it never moved for an abbreviated discovery schedule; and it did not request an expedited trial date or otherwise seek to expedite the proceedings upon filing its complaint. Indeed, the State waited 23 days after filing its complaint before even asking the D.C. District Court to schedule a status conference.

Pursuant to Federal Rule of Civil Procedure 24, a number of individual voters and groups (including the Davis Appellees, Appellee LULAC, the Texas State NAACP, and the State Legislative Black Caucus) intervened as defendants in the D.C. District Court preclearance litigation to protect their voting rights and interests under Section 5 of the Voting Rights Act.[3] Although the State has

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[3]Private parties are routinely permitted to intervene in Section 5 preclearance cases brought by covered jurisdictions against the United States, so long as they have relevant interests that may not be adequately protected by the federal government. As this Court put it in *Georgia v. Ashcroft*:

> Here, the District Court granted the motion to intervene because it found that the intervenors' "analysis of the . . . Senate redistricting pla[n] identifies interests that are not adequately represented by the existing parties." . . . Private parties may intervene in § 5 actions assuming they

suggested otherwise, these interventions in the preclearance action did not slow the pace of the litigation one bit. Rather, the State continued to slow the pace.

On September 14, 2011, five days *before* the Department of Justice filed its answer to the State's complaint in the D.C. District Court, and before any discovery could be undertaken in the case, the State filed a motion for summary judgment. Mot. S.J., *Texas v. United States*, No. 11-cv-01303 [Dkt. # 41] (D.D.C. Sept. 14, 2011). The State claimed in that motion that all of its statewide plans (Congress, State Senate, State House, and State Board of Education) were free of a racially discriminatory purpose and effect. This was an ill-advised step by the State of Texas that caused further delay. Instead of seeking a quick trial date, the State instead sought summary judgment on the fact-intensive issues of racially discriminatory intent and effect. And it did so despite a unanimous holding from this Court that in the redistricting context, the issue of racially discriminatory intent is rarely (if ever) appropriate for resolution on summary judgment. *See Hunt v. Cromartie*, 526 U.S. 541, 553-54 & n.9 (1999).

> meet the requirements of [Fed. R. Civ. P.] 24, and the District Court did not abuse its discretion in granting the motion to intervene in this case.

539 U.S. 461, 477 (2003) (citing *NAACP v. New York*, 413 U.S. 345, 367 (1973); first two alterations in original).

On September 19, 2011, the Department of Justice filed its answer in the D.C. District Court. The Department stated that while it would oppose preclearance of the Congressional and State House plans, it would not oppose preclearance of the Senate and Board of Education plans. It is important to note, however, that the answer was filed before any discovery was undertaken, and thus before Appellees developed ample evidence that the State Senate plan was drawn with a racially discriminatory purpose and effect. *See infra* 20 (sworn declarations demonstrating that Senate plan was drawn by Anglo senators who deliberately excluded racial and language minority senators from their deliberations and that process was "intentionally discriminatory"). Moreover, the evidence showed that the fracturing of the minority population in Senate District 10 effectively eliminated the ability of minority voters to elect their preferred candidate of choice. *See infra* 21-22 (sworn declarations of Senators Ellis, Zaffirini, West, and Davis, and Representative Veasey; Report of Lichtman).

In light of the Department of Justice's answer, which included allegations of discriminatory intent, Judge Collyer (who is serving as the managing judge for the preclearance litigation) twice suggested that the State reconsider its decision to pursue summary judgment because it might result in a slower resolution of the case. *Transcript of Telephonic Conference, Texas v. United States*, No. 1:11-cv-01303 at 33-34 [Dkt. # 71] (D.D.C. Sept. 21, 2011).

Judge Collyer stated: "If the State of Texas, hearing everybody's objections and the position of the United States, now thinks, 'Well, our motion for summary judgment needs to be augmented, rethought, reargued,' why then we can say, 'Okay, we won't do this by motions, we'll do it by trial,' . . . But at the moment it's Texas' lawsuit and Texas' motion for summary judgment, and that's what we're scheduling." *Id.* at 32:25-33:13. Judge Collyer emphasized her suggestion by asking counsel for the State "whether in light of all the responses you've gotten, you would rather say, 'Okay, let's just go to trial and get this done[,] instead of try summary judgment and have somebody say, 'Well, I can't really decide on this record,' which I'm not anticipating, but which is, with summary judgment, always a risk." *Id.* at 33:15-21. Despite Judge Collyer's sage advice that the issue of racially discriminatory intent was perhaps not capable of summary disposition, and the offer of an early trial date, the State declined the D.C. Court's invitation to expedite the proceedings and instead insisted that it would pursue its summary judgment motion. *Id.* at 34:3-18.

The oppositions to summary judgment demonstrated in great detail that there were significant factual questions to be resolved about the State's discriminatory intent in enacting its redistricting plans, as well as the discriminatory and retrogressive effects of the enacted plans. Intervenors described the secretive maneuverings by members representing Anglo districts to push through the Senate map without any meaningful

consultation with the public or with members who represented majority minority districts. *See* Davis Mem. in Opp'n to Mot. for S.J. at 9-13 [Dkt. # 76-1] (D.D.C. Oct. 25, 2011) (hereinafter "Davis Opp'n"); Davis Statement of Genuine Issues and Disputed Material Facts ¶¶ 14-22 [Dkt. # 76-2] (D.D.C. Oct. 25, 2011) (hereinafter "Davis Statement"); Texas Legislative Black Caucus et al. Statement of Genuine Issues and Disputed Material Facts at 6 [Dkt. # 80] (D.D.C. Oct. 25, 2011) (hereinafter "TLBC Statement"). Sworn declarations from minority members of the legislative redistricting committees supported these allegations and showed the process was "intentionally discriminatory." *See* Exs. 4, 10, 11 to Davis Opp'n [Dkt. ## 76-7, 13, 14] (sworn declarations of Senators Zaffirini and West and Representative Veasey).

Intervenors also raised significant factual questions as to the discriminatory effect of the enacted plans. *See* Davis Opp'n at 5-9; Davis Statement ¶¶ 3-12, 25-31; TBLC Statement at 8. First, they demonstrated that Senate District 10 in the benchmark map was an effective minority opportunity district. *See* Davis Statement ¶¶ 3-12; Lichtman Rept. Second, they showed that the legislature dismantled this district in the face of ample evidence of its effectiveness. *See* Davis Statement ¶ 25. Sworn declarations showed that the State effectively eliminated the ability of minority voters to elect their preferred candidate of choice in the Fort Worth area. *See* Exs. 3-5, 8, 10-11, 13 to Davis Opp'n [Dkt. ## 76-6-8, 11, 13-14, 16] (sworn declarations of Senators Ellis, Zaffirini, West, and

Davis, and Representative Veasey, Commissioner Brooks, Constable De Leon). Moreover, evidence presented by Intervenors indicated that even Anglo Republican members were concerned that the map would not be precleared under the Voting Rights Act. See Ex. 8 to Davis Opp'n [Dkt. # 76-11] (sworn declaration of Senator Davis). Thus, Intervenors cast substantial doubt on the viability of the legislature's plan under Section 5.

Following briefing of the summary judgment motion and a full day of oral argument on November 2, 2011, the D.C. District Court unsurprisingly concluded that this was not a case that could be resolved on a motion for summary judgment. As the court held, there were "material issues of fact in dispute that prevent[ed] th[e] Court from entering declaratory judgment that the three redistricting plans meet the requirements of Section 5 of the Voting Rights Act. *See* 42 U.S.C. 1973c." Order, *Texas v. United States*, No. 1:11-cv-01303 at 2 [Dkt. # 106] (D.D.C. Nov. 8, 2011), J.A. 550-51. The Court further found that as to all three redistricting plans, "the State of Texas used an improper standard or methodology to determine which districts afford minority voters the ability to elect their preferred candidates of choice." *Id.* at 1, J.A. 550.

The D.C. District Court was cognizant of the fact that the filing deadlines for candidates in Texas were fast approaching[4] and the primary elections were

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[4] Though the candidate qualifying date was originally set for November 14, 2011, the three-judge court in Texas delayed the

only four months away. The D.C. Court concluded that it was the responsibility of the Texas federal court to impose maps that would allow voters in the State to exercise their right to vote despite the State's failure to obtain preclearance of newly enacted maps reflecting the current census data. Thus, the court declared: "If any one of the plans is not precleared by this Court at this stage in the proceedings, the District Court for the Western District of Texas must designate a substitute interim plan for the 2012 election cycle by the end of November. *See Perez v. Texas*, No. 11-360, Am. Order [Dkt. # 391] (W.D. Tex. Oct. 4, 2011) (consolidated action)." *Id.* at 1-2, J.A. 550.

The preclearance proceedings in the D.C. District Court are still underway, and an eight-day trial is set to begin in that court on January 17, 2012. *Texas v. United States*, No. 11-cv-01303 [Dkt. # 112] (D.D.C. Dec. 13, 2011).

III. The Proceedings on the State Senate Map in the Western District of Texas

On September 22, 2011, while the preclearance proceedings were moving forward in the D.C. District Court, the Davis Appellees filed the Western District of Texas action currently on appeal to this Court involving the State Senate redistricting plan – *Davis v. Perry*. Suing the Governor of Texas and various officials charged with administering elections, the Davis Appellees alleged that the Senate map, even if

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opening of candidate qualifying (with the agreement of all parties, including the State of Texas) until November 28, 2011.

precleared, would violate the Fourteenth Amendment and Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because the changes made to District 10 were the product of an intent to harm minority voters and had the effect of harming those voters. Compl., Prayer ¶¶ 4-5, J.A. 424. The Davis Appellees also asked the three-judge panel to enforce Section 5 by preventing the State from implementing the new map unless and until it was precleared. Compl., Prayer ¶ 6, J.A. 424. Appellee LULAC filed a similar suit shortly thereafter pursuing similar claims with respect to the State Senate plan, and the two cases were consolidated.

Appellees' challenge to the State Senate plan was similar to prior lawsuits (also on appeal here) filed in the same court challenging the legality of the new Texas congressional district map and the new map for the Texas House. In those two earlier cases, but not in this Senate case, the district court held a trial on the claims at issue, withholding ruling on the merits until after a preclearance decision by the D.C. District Court with respect to the maps.

Once the D.C. District Court issued its decision denying summary judgment for the State and instead requiring a trial to determine whether preclearance should be granted, it was clear that the Western District of Texas panel would have to implement interim maps in order for the 2012 elections to take place. Accordingly, the court below held a day-long evidentiary hearing at which it took evidence and considered proposed plans from all parties. With regard to the Senate map, the Davis

Appellees presented evidence showing that the State intentionally discriminated against minority voters under the factors developed in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-68 (1977), and that the resulting plan also was discriminatory in effect. *See, e.g.*, *supra* 8-13. The Davis Appellees also presented evidence demonstrating that the coalition of minority voters in Senate District 10 was protected by Section 2 under the guiding precedent of *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1985), and *Campos v. City of Baytown*, 840 F.2d 1240, 1245 (5th Cir. 1988). *See, e.g.*, Lichtman Report at 3, 7, J.A. 477-78, 483; Plan S156 Map, M.J.A. 77; Racial Shading Map of S156, M.J.A. 80.

The Davis Appellees presented the court below with proposed interim Senate maps that demonstrated that District 10 could be drawn to comply with Sections 2 and 5 of the Voting Rights Act and the Fourteenth Amendment. After hearing this evidence, and viewing the proposed interim maps presented by the parties, the three-judge court promulgated its own interim plan for the State Senate on November 23, 2011. The panel did not simply adopt one of the Davis or LULAC Appellees' proposals, but rather took a more modest approach to redrawing Senate District 10. *Compare* Plan S156 Map, M.J.A. 77, *and* Court-Ordered Interim Map, M.J.A. 73. The resulting interim plan was unanimously adopted by all three members of the panel in Texas.

In its order implementing the map, the panel stated that in "drawing a Senate map, the court was faced with factual and legal concerns very different from those faced in regard to the Congressional and State House maps. Thus, the manner in which the State Senate [interim] map is drawn is quite different from the manner in which the Congressional and State House [interim] maps are drawn." J.A. 407. The panel further observed that the "only objections raised to the State's enacted map in this litigation concerned Senate District 10." *Id.* As a result, the panel concluded that the "appropriate exercise of 'equitable discretion in reconciling the requirements of the Constitution with the goals of state political policy' was to maintain the status quo from the benchmark plan with regard to Senate District 10 pending resolution of the litigation in the District of Columbia but otherwise to use the enacted map as much as possible." *Id.* at 407-08 (footnote omitted).

The court below thus kept intact 26 of 31 districts in the State's 2011 enacted plan. It redrew only Senate District 10 and the surrounding four districts to restore District 10 to its pre-existing configuration in the only currently precleared, legislatively enacted map – the 2001 plan. *Compare* Plan S100 (Benchmark) Map, M.J.A. 74, *and* Court-ordered Interim Map, M.J.A. 73; *see also* Map Comparing Changes to Senate District 10, M.J.A. 75. The minor changes required to restore Senate District 10 to its benchmark configuration did not significantly alter the geographic base or predicted political behavior of the adjoining four districts. In

fact, the court's interim plan for the State Senate is very unlikely to alter the partisan makeup of the Texas Senate at all. Under the benchmark plan, Republican candidates are favored election in 19 Districts, and Democratic candidates are favored in 12 districts. The three-judge court's interim plan will almost certainly result in the same partisan makeup of the Senate, and, like the benchmark plan, will give minority voters the opportunity to elect their candidate of choice in the 12 Democratic-leaning districts. In restoring Senate District 10 to its benchmark status, the Court's interim plan respected the policy choices of elected representatives in Texas as they were reflected in the Senate plan that was adopted in 2001 and precleared by the Department of Justice. And the remaining districts adhered to the State's policy choices in its 2011 plan. Thus, all 31 of the State Senate districts in the three-judge court's interim plan reflect policy choices made at some point by the Texas Legislature.

The State sought to stay the court's implementation of the interim map. Relying exclusively on this Court's *per curiam* opinion in *Upham v. Seamon*, 456 U.S. 37 (1982), the State argued that the court had erred because it was "require[d] ... to defer to legislatively enacted maps" when putting an interim map into place." J.A. 376. In essence, the State asked the three-judge panel to order its enacted Senate map into place even though the map had not been precleared, as Section 5 requires.

Over a dissent from Judge Smith, the court refused to stay implementation of the interim Senate map. As the panel majority observed, "when there is no other legally enforceable plan in effect, this Court is required to craft an independent court-drawn interim map." J.A. 402. The panel correctly recognized that under this Court's precedent, "the Court is precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan." *Id.* at 2, J.A. 403.

The State then filed an emergency application for a stay with this Court. On December 9, 2011, this Court granted the stay, treated the applications for stay as jurisdictional statements, and noted probable jurisdiction.

SUMMARY OF ARGUMENT

The three-judge district court in Texas complied with decades of this Court's precedents in implementing an interim plan to permit the 2012 elections to go forward. The court acted cautiously and respected the legislative judgment of the State, redrawing only the objected-to Senate District and its surrounding districts to restore the configuration to the benchmark plan that is the only precleared, legislatively enacted plan currently in existence. The court properly refused to simply adopt the State's enacted plan as its interim plan because to do so would render meaningless the exclusive jurisdiction that Congress bestowed on the Department of

Justice and the District Court for the District of Columbia to make preclearance determinations. The court likewise properly refused to rule on the merits of the various statutory and constitutional challenges to the State's enacted plans as it was forbidden from doing so unless and until those plans were precleared.

The State relies on a single *per curiam* opinion of this Court to urge that district courts are required to defer to the legislatively enacted plan when drawing an interim map. But the case upon which the State relies – *Upham v. Seamon* – says no such thing. In fact, this Court's precedent actually mandates that anytime a federal court adopts a plan that reflects the policy choices of the State's legislature, that plan requires preclearance. Obviously, adopting the State's plan as its interim plan was not an option for the court below and no opinion of this Court suggests otherwise.

ARGUMENT

I. The District Court's Imposition of an Interim Senate Map Was Required By Numerous Decisions of this Court.

1. As demonstrated above, the actions of the State of Texas in delaying the passage of its redistricting plans, delaying the submission of its plans for preclearance, forgoing the more expeditious alternative of administrative preclearance, and refusing the D.C. District Court's offer of an early trial date in the still-pending preclearance proceedings, left the panel in the Western District of Texas in a difficult position. Given the situation it

was facing – the absence of a precleared district map and the denial of summary judgment in the D.C. District Court – the three-judge panel below acted fully in accordance with decades of this Court's precedent in imposing an interim map.

Numerous decisions from this Court have made clear that unprecleared redistricting plans are legally unenforceable unless and until precleared. Indeed, no change to *any* electoral practice in a covered jurisdiction can take place until precleared. As this Court recently held, "Section 5 goes beyond the prohibition of the Fifteenth Amendment by suspending *all* changes to state election law – however innocuous – until they have been precleared by federal authorities in Washington, D.C." *Northwest Austin Mun. Utility Dist. No. One v. Holder*, 129 S. Ct. 2504, 2511 (2009) (emphasis in original); *see also Lopez v. Monterey Cty.*, 519 U.S. 9, 20 (1996) ("A jurisdiction subject to § 5's requirements must obtain either judicial or administrative preclearance before implementing a voting change. No new voting practice is enforceable unless the covered jurisdiction has succeeded in obtaining preclearance."); *McDaniel v. Sanchez*, 452 U.S. 130, 146 (1981) ("A new reapportionment plan enacted by a State, including one purportedly adopted in response to invalidation of the prior plan by a federal court, will not be considered 'effective as law,' ... until it has been submitted and has received clearance under § 5." (quotation marks omitted)); *Connor v. Waller*, 421 U.S. 656, 656 (1975) (*per curiam*) ("Those Acts are not now and will not be effective as laws until and unless cleared pursuant to

§ 5."); *Georgia v. United States*, 411 U.S. 526, 538 n.9 (1973) ("States subject to § 5 [are] required to obtain prior clearance before proposed changes could be put into effect.").

This rule is based on the plain language and purpose of Section 5. Section 5 requires that "[w]henever a [covered] State or political subdivision ... enact[s] or seek[s] to administer any [new] voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," that State or subdivision must either (1) submit the proposed change to the Attorney General of the United States Department of Justice who shall have 60 days to object to the proposed change and if there is no objection it shall go into effect; or (2) institute a declaratory judgment action in the United States District Court for the District of Columbia seeking a declaration that the proposed change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. Thus, a covered jurisdiction can take either the "expeditious alternative" of submission to the Department of Justice, or the longer path through the District Court for the District of Columbia. *Morris*, 432 U.S. at 504.

As this Court has recognized, Congress adopted Section 5 "to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process." *See McDaniel*, 452 U.S. at 149. It did so by providing two – and only two – entities with the authority to make preclearance determinations. This was intentional. *See* S. Rep.

No. 94-295, at 18 (1975), *reprinted in* 1975 U.S.C.C.A.N. 774, 784 (noting that the "Committee's objective [was] to utilize a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or to the District of Columbia District Court"). "This congressional choice in favor of specialized review necessarily constrains the role of the three-judge district court," which "lacks authority to consider the discriminatory purpose or nature of the changes." *Lopez*, 519 U.S. at 23; *see also United States v. Board of Supervisors of Warren County*, 429 U.S. 642, 645 (1977) ("What is foreclosed to [the] district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General—the determination whether a covered change does or does not have the purpose or effect of denying or abridging the right to vote on account of race or color."). Allowing a covered jurisdiction to circumvent this congressionally designed process by seeking what is in effect a preclearance determination from another court would be directly contrary to the procedures Congress specified in Section 5.

These procedures are in place to prevent "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141 (1976). Under the congressionally mandated design, it is the State's burden to prove non-retrogression. In Section 5, Congress chose "'to shift the advantage

of time and inertia from the perpetrators of the evil to its victim,' by 'freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.'" *Id.* at 140 (quoting H.R. Rep. No. 94-196, at 57-58 (1970)). Thus, in the declaratory judgment proceeding Texas chose to institute in the D.C. District Court, the onus is on Texas to demonstrate that its proposed redistricting plans are not discriminatory in purpose or effect.

Here, Texas has thus far failed to satisfy its Section 5 burden. The D.C. District Court has denied summary judgment to Texas, finding that as to the Senate plan, there are "material issues of fact in dispute that prevent[ed] th[e] Court from entering declaratory judgment that [it] meet[s] the requirements of Section 5 of the Voting Rights Act." J.A. 550-51. While no final preclearance determination has yet been made, the result of the State's dilatory and flawed strategy for preclearance was that there was no new Senate district map legally in effect as of the time when state law prescribed that the election process should begin.

With no new map legally in effect, the only other district map in existence was the one enacted in 2001. But that map, based as it was on the 2000 census, was severely malapportioned, thus violating the one-person, one-vote requirement in the Equal Protection Clause of the Fourteenth Amendment. Because a failure to make available a constitutionally compliant map would itself be a violation of the Constitution, the three-judge panel

needed to step in to provide an interim map to remedy the problem.

The authority and responsibility of federal courts to step in when the State has not obtained preclearance in a timely manner has long been recognized by this Court. Indeed, when this issue arose in the last cycle of redistricting, this Court upheld the procedure of a three-judge panel implementing an interim map because the redistricting plan at issue "had not been precleared and had no prospect of being precleared in time for the [next] election." *Branch v. Smith*, 538 U.S. 254, 265 (2003). In *Branch v. Smith*, this Court held it was the responsibility of district courts to fashion an interim redistricting plan for impending elections to "remedy[] a state legislature's failure to redistrict constitutionally" by obtaining timely preclearance. *Id.* at 273. As the Court observed: "When the State, through its legislature or other authorized body, cannot produce the needed decision, then federal courts are 'left to embark on [the] delicate task' of redistricting." *Id.* at 278 (alteration in original). The three-judge panel below was acting fully in accordance with this Court's precedent in implementing an interim map.

2. Despite the State's contentions otherwise, in undertaking this task, the panel simply did not have the option of rubberstamping the State's 2011 enacted plan and ordering it into effect as the interim plan. This Court has held multiple times that if a map reflects the policy choices of elected leaders in a covered jurisdiction, then that map still

must be precleared, even if adopted by a federal court. In *Lopez v. Monterey County*, 519 U.S. 9 (1996), this Court expressly held that "where a [federal] court adopts a proposal 'reflecting the policy choices ... of the people [in a covered jurisdiction] ... the preclearance requirement of the Voting Rights Act is applicable.'" *Id.* at 22 (citation omitted; alteration in original); *see also McDaniel*, 452 U.S. at 153. Obviously, had the court below adopted a map that still needed to be submitted for preclearance, this would have left the parties in exactly the same predicament – impending elections with no enforceable map.

Citing *Lopez*, the court below correctly held that it was "precluded from simply adopting the State's enacted plan or deferring to the challenged plan, as doing so would make the preclearance process meaningless and constitute a de facto ruling on the merits of the various legal challenges to the State's plan." J.A. 393. Congress entrusted preclearance determinations to one of two bodies: either the Attorney General of the United States, or the District Court for the District of Columbia, not the Western District of Texas. Thus, as the court below observed, it "cannot simply adopt an unprecleared redistricting plan, in whole or in part, with the signatures of a few judges sitting in Texas." J.A. 403-04.

The court then did exactly what it was supposed to do. It went as far as it legally could to reflect the policy choices of the State Legislature in its Senate map. The panel adopted 26 of the 31 districts exactly

as drawn by the legislature in its 2011 State Senate map, reshaping only Senate District 10, which is the District at issue in the preclearance proceedings, and its four adjoining districts. Moreover, the three-judge panel merely restored District 10 to its benchmark status, largely following the lines as drawn by the State legislature in its 2001 Senate plan. In restoring Senate District 10 to its benchmark configuration, the panel did not significantly alter the geographic base or political behavior of the adjoining four districts. *See* J.A. 408 n.2.

To have gone even further in deferring to the legislature would have been legally indefensible. This Court made clear decades ago that Section 5 of the Voting Rights Act "essentially freezes the election laws of the covered States unless a declaratory judgment is obtained in the District Court for the District of Columbia holding that a proposed change is without discriminatory purpose or effect." *Georgia v. United States*, 411 U.S. at 538. The three-judge panel's order is plainly consistent with this Court's precedents regarding how Section 5 preserves the status quo. The interim plan correctly froze the district lines for Senate District 10 as they existed in the prior plan so the D.C. District Court (where preclearance remains pending) can make the requisite preclearance determination under Section 5.

To adopt the State's proposed rule that a court is required to defer to the unprecleared, legislatively enacted map and simply adopt it when election

deadlines are looming would incentivize exactly the bad faith behavior that the State of Texas has engaged in here. It would encourage covered jurisdictions to delay as long as possible in enacting redistricting plans and submitting them for preclearance, ensure that covered jurisdictions engage in maneuvers designed to slow the process, and then reward these jurisdictions by allowing their plans to go into effect without the review that Congress required from the Department of Justice or the D.C. District Court. This would render Section 5 nearly meaningless.

3. Similarly misguided is the State of Texas's contention that the panel below erred in redrawing Senate District 10 without making a determination as to the merits of Appellees' pending Section 2 and constitutional challenges to the enacted version of the District. In issuing its interim map, the three-judge panel drew "an independent redistricting plan without ruling on any of the various legal challenges, and it ... considered the parties' legal challenges only for the purpose of avoiding the same legal challenges to the court drawn map." J.A. 404-05. It was entirely proper for the district court to refuse to base its narrow modifications to the enacted plan on conclusions about whether that plan violated the Fourteenth Amendment or the Voting Rights Act. The court is *legally precluded* from issuing a decision on the merits of the State's plan unless and until that plan is precleared.

Under this Court's rulings, the three-judge court in Texas is *prohibited* from deciding the

constitutionality of the State's redistricting plans or their compliance with Section 2 of the Voting Rights Act while a preclearance determination is pending before the D.C. District Court. This Court has directed that "until clearance has been obtained," courts should not "address the constitutionality of the new measure." *Wise v. Lipscomb*, 437 U.S. 535, 542 (1978); *see also Connor*, 421 U.S. at 656 (holding that district court erred in adjudicating constitutionality of Mississippi acts based on claims of racial discrimination because "[t]hose Acts are not now and will not be effective as laws until and unless cleared pursuant to s 5"). Thus, "[w]here state reapportionment enactments have not been precleared in accordance with § 5, the district court 'err[s] in deciding the constitutional challenges' to these acts." *Branch v. Smith*, 538 U.S. 254, 283 (2003) (Kennedy, J., concurring).

Indeed, while a preclearance determination is pending, the court's only role is to determine "whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate." *Lopez*, 519 U.S. at 23. Thus, the court below properly determined that (1) Section 5 covered the contested redistricting plan; (2) Section 5's requirements had not been satisfied; and (3) an appropriate temporary remedy would be to order an interim Senate plan that deferred to the State's legislative judgment as much as possible and otherwise used the benchmark map where the State's legislative judgment was contested.

This practice of waiting for preclearance before opining on other challenges to the plans likewise follows from the plain language and structure of the Voting Rights Act, which contemplates that Section 5 proceedings will precede consideration of challenges based on Section 2 or on the Constitution. *See* 42 U.S.C. § 1973c (providing that the Attorney General's failure to object to a proposed voting change – such as a new redistricting plan – shall not "bar a *subsequent* action to enjoin enforcement of" the plan (emphasis added)); *see also McDaniel*, 452 U.S. at 146 ("Neither, in those circumstances, until clearance has been obtained, should a court address the constitutionality of the new measure") (quotation marks omitted). Thus, Appellants' claims that the dismantling of Senate District 10 does not violate Section 2 of the Voting Rights Act cannot be finally adjudicated until *after* the State obtains preclearance.

In this instance as well, the legislative history further supports the prevailing rule. In 1975, when Congress adopted amendments to the Voting Rights Act, the Senate Committee addressed the appropriate role of remedial courts. The Committee concluded that federal courts should not make determinations regarding constitutional questions until all Section 5 challenges have been resolved. Such a result, the Committee stated, was "consistent with the Committee's objective to utilize a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or to the District of Columbia

District Court." S. Rep. 94-295, at 18, *reprinted in* 1975 U.S.C.C.A.N. at 784.

In sum, it is hard to find any basis for criticizing the decision of the three-judge panel in Texas to issue an interim map and to do so in a manner that only slightly departed from the enacted but unprecleared map. To do what Appellants ask here – reverse the district court's interim plan and allow the State's unprecleared plan to go into effect – would directly contravene the dictates of Congress and numerous rulings of this Court.

II. The State's Reliance on *Upham* Is Based on a Misreading of that Case.

1. The State's argument – that the three-judge panel should have simply ordered into effect the unprecleared enacted plan – relies entirely on this Court's brief *per curiam* opinion in *Upham v. Seamon*. That reliance is completely misplaced. *Upham* involved a situation in which a plan was submitted for preclearance to the United States Attorney General and he interposed a timely objection to two contiguous districts in South Texas. The Attorney General's objection letter *expressly stated* that, with respect to the other 25 districts, the state had "satisfied its burden" under Section 5 of demonstrating that the plan was non-discriminatory in both purpose and effect. *Upham*, 456 U.S. at 38 (quoting from the Department of Justice objection letter). That is far different from the situation here.

Here, the D.C. District Court denied the State's motion for summary judgment, finding that the State has not yet satisfied its burden under Section 5 with

respect to *any* of the districts in the Senate's plan. In contrast, in *Upham,* the State already had satisfied its preclearance burden for 25 of the 27 districts and the court was thus in remedial proceedings in which it was required to remedy the Attorney General's stated objections. *Id.* Where the three-judge court in *Upham* erred was that it proceeded to alter not only the two districts that had been objected to, but also other areas of the State that had already been found to satisfy preclearance requirements. The court altered these additional districts as to which the Attorney General found no Section 5 problems without making an independent finding that there were other statutory or constitutional violations as to these additional areas that necessitated the redrawing. *See id.*

In this case, by contrast, there has been no preclearance determination yet and, as explained above, the three-judge court in Texas was precluded by this Court's precedent from finding statutory or constitutional violations in a plan that had not yet been precleared. The three-judge court thus had neither the authority nor the need to opine on the likely success of the plaintiffs who were bringing non-Section 5 challenges to the new State Senate map. It simply drew an interim map to allow elections to go forward while avoiding the violation of Section 5 that would otherwise occur if the legislatively enacted map were put into place without being precleared. Indeed, Appellees alleged as Count III of their Complaint in the Texas court that "[t]he State's proposed state senate redistricting plan cannot be administered because S148 has not

been precleared pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c," and they asked the court below to implement a new map absent preclearance. Compl. ¶¶ 28-29, J.A. 419 That not only is precisely what the district court did here, it is entirely consistent with this Court's precedents under Section 5 that bar enforcement of unprecleared redistricting plans.

Moreover, even if *Upham* is read to suggest that in implementing *any* interim redistricting plan – and not just remedial plans following a denial of preclearance – a "district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect," *Upham*, 456 U.S. at 43, then the interim Senate plan at issue here meets that standard. The modifications made to the plan were necessary to avoid the violation of Section 5 that would occur if the panel simply ordered an unprecleared plan into place. *See Lopez*, 519 U.S. at 22.

The State seems to suggest that *Upham* stands for the proposition that even the submission of a plan for preclearance is enough to trigger mandatory deference and that the only time a court is not required to defer to the State's plan in its entirety is where the jurisdiction did not submit its plan for preclearance. But numerous decisions of this Court refute that position. The plans in *Warren County* had been submitted to the Attorney General, yet when the district court adopted one of the submitted but unprecleared plans, this Court unanimously reversed, holding: "No new voting practice or

procedure may be enforced unless the State or political subdivision has succeeded in its declaratory judgment action or the Attorney General has declined to object to a proposal submitted to him." 429 U.S. at 645 (emphasis added).

Were it the rule that submission alone is enough to trigger deference, covered jurisdictions would do just what Texas has done here – wait until the last possible minute to submit a plan for preclearance, and then delay the process as much as possible once it gets underway. It would create perverse incentives if so long as a submission is merely pending, it deserves deference, but an actual preclearance decision could end that deference. Indeed, this Court has already observed that "if covered jurisdictions could avoid the normal preclearance procedure by awaiting litigation challenging a refusal to redistrict after a census is completed, the statute might have the unintended effect of actually encouraging delay." *McDaniel*, 452 U.S. at 151 (refusing to allow changes adopted by covered jurisdictions in response to court orders to take effect without preclearance).

2. That the Department of Justice did not object to the Senate plan in its answer filed in the D.C. District Court does not change the analysis at all. As an initial matter, that answer was filed before discovery showed that the redistricting plan was infected with racially discriminatory intent. *See supra* 19-21. But more importantly, the State of Texas chose to pursue preclearance from the D.C. District Court and thus it is the D.C. District Court's

determination that matters, not the Department of Justice's failure to object.

Though Texas makes much of the Department's failure to object to the Senate plan, it ignores that this failure is of no legal force and effect given that Texas chose to pursue preclearance in the D.C. District Court. As discussed above, the plain language of Section 5 makes clear that when a plan is submitted to the D.C. District Court, only a ruling by the court will permit a change to take effect. Section 5 provides that whenever a covered jurisdiction "shall enact or seek to administer any" change in voting practices, the jurisdiction "may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such . . . [change] neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c(a). The statute further provides that "*unless and until the court enters such judgment* no person shall be denied the right to vote for failure to comply with such" change. *Id.* (emphasis added).

In contrast, in the administrative process, a change can take effect upon a failure to object by the Department of Justice and thus silence could "constitute[] consent." *McCain v. Lybrand*, 465 U.S. 236, 247 (1984). Texas would have this Court ignore the statutory distinction between the two procedures and place conclusive weight on the Department's failure to object to the State Senate map. But this Court may not. The only Section 5 determination

that is currently of any import is the D.C. District Court's determination that it could not preclear the State Senate plan because the State used the wrong standards and methodology to determine minority ability to elect a candidate of choice. Unless and until the D.C. District Court preclears the State Senate map, it may not take effect.

III. The State's Objections to Compliance with Section 5 are Unfounded.

Explicit in some of its prior briefing and implicit in its position before this Court is the State of Texas's objection to being subjected at all to the requirements of Section 5 of the Voting Rights Act. But Section 5 remains critically important in the political landscape of Texas, particularly now that Texas has become a majority-minority state. Section 5's preclearance procedures remain vitally necessary to secure the franchise for all Texans, especially racial and language minorities.

In the first six years after Texas became a covered jurisdiction under Section 5 in 1975, "Texas received more letters of objection than any state covered under Section 5 for 16 years." *Extension of the Voting Rights Act: Hearings Before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary*, 97th Cong. 1877 (1981) (prepared statement of Vilma S. Martinez, President and General Counsel, Mexican American Legal Defense and Educational Fund). Moreover, "[b]etween the time Texas was brought under section 5 coverage in 1975 and December 1990, the Justice Department interposed 131 objections to voting

procedures in the state," with many of these objections being raised with respect to "multiple infractions of voting law within a single jurisdiction." QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990 (Chandler Davidson & Bernard Grofman eds., 1994). These infractions "embraced the spectrum of illegal procedures: racial gerrymandering, discriminatory purges of registered voters, imposition of numbered posts and the majority runoff requirement, annexations that diluted minority votes, a faulty bilingual oral assistance program, reduction in the number of elected officials, transfer of duties from one official to another, and unfair changes in election dates." *Id.* In all, the Department of Justice has issued 201 Section 5 objections to proposed electoral changes in Texas, more than half of which occurred after 1982. *See* Nina Perales, Luis Figueroa & Criselda G. Rivas, ReviewtheVRA.org, VOTING RIGHTS IN TEXAS 1982-2006 at 15-16 (June 2006); *see also To Examine the Impact and Effectiveness of the Voting Rights Act: Hearings Before the Subcomm. on Const. of the H. Comm. on the Judiciary*, 109th Cong. 18 (2005) (prepared statement of Ann Marie Tallman, President and General Counsel, Mexican American Legal Defense and Educational Fund) (describing successful Section 5 challenges in Texas by MALDEF to protect Latino voters in 2001).

Section 5 is particularly necessary in the context of redistricting. As this Court is aware, Texas's redistricting plans have frequently been subject to challenge before this Court. Most recently, this Court found that Texas had violated Section 2 of the

Voting Rights Act, citing "evidence suggesting that the State intentionally drew" a district to dilute the voting strength of the Latino population and finding that Texas must be "held accountable for the effect of [its] choices in denying equal opportunity to Latino voters." *LULAC*, 548 U.S. at 441-42.

The long history of election-related discrimination in Texas, as well as the frequent necessity of applying of Section 5's protective measures in Texas even as compared to other covered jurisdictions, all support the conclusion that Section 5 is as pertinent as ever to the State, particularly in the context of redistricting. Texas's complaints that it should not be subject to these requirements and its demand that the lower court render Section 5 a nullity by implementing a plan without preclearance should not be countenanced by this Court.

CONCLUSION

The decision of the United States District Court for the Western District of Texas ordering into effect an interim district plan for the Texas Senate should be affirmed.

December 21, 2011 Respectfully submitted:

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APPENDIX

42 U.S.C. § 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District

Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional

information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

APPELLEE'S BRIEF

Nos. 11-713, 11-714, 11-715

IN THE

Supreme Court of the United States

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.,

APPELLANTS,

V.

SHANNON PEREZ, ET AL.,

APPELLEES.

On Appeal from the United States District Court for the Western District of Texas

JOINT APPELLEES' BRIEF AS TO INTERIM CONGRESSIONAL PLAN

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QUESTIONS PRESENTED

1. Whether this Court should order interim adoption of the Texas Legislature's 2011 congressional redistricting plan where that plan continues Texas's long history of discriminating against racial minorities in voting, flouts the Voting Rights Act and Constitution, and intentionally cracks minority communities, reducing minority influence even as Texas's minority population has grown dramatically.

2. Whether the district court erred in following this Court's precedent and Section 5 of the Voting Rights Act by refusing to adopt Texas's congressional plan as an interim plan where the Attorney General and many intervenors have challenged the entire plan as violating Section 5, the plan has not received Section 5 approval, and the district court—as required by precedent—has yet to rule on other serious challenges to Texas's plan.

3. Whether this Court should adopt Texas's novel rule requiring adoption of an unprecleared plan except where changes are necessary to "address likely legal errors" even though this conflicts with statutory text and decades of this Court's precedent and the standard would not lead to a significantly different interim plan because Texas's plan is riddled with "likely legal errors."

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1, the following list identifies all of the parties appearing here and in the court below.

Appellants are Rick Perry, in his official capacity as Governor of Texas, Hope Andrade, in her official capacity as Secretary of State, and the State of Texas.

Appellees are Shannon Perez, Harold Dutton, Jr., Gregory Tamez, Sergio Salinas, Carmen Rodriguez, Rudolfo Ortiz, Nancy Hall, Dorothy Debose, Mexican American Legislative Caucus of the Texas House of Representatives, Texas Latino Redistricting Task Force, Armando Cortez, Socorro Ramos, Gregorio Benito Palomino, Florinda Chavez, Cynthia Valadez, Cesar Eduardo Yevenes, Sergio Coronado, Gilberto Torres, Renato De Los Santos, Joey Cardenas, Alex Jimenez, Emelda Menendez, Tomacita Olivares, Jose Olivares, Alejandro Ortiz, Rebecca Ortiz, National League of United Latin American Citizens, Gabriel Y. Rosales, Belen Robles, Ray Velarde, Johnny Villastrigo, Bertha Urteaga, Baldomero Garza, Marcelo Tafolla, Raul Villastrigo, Asenet T. Armadillo, Elvira Rios, Patricia Mancha, Texas Democratic Party, Boyd Richie, Congressman Henry Cuellar, Margarita V. Quesada, Rome Munoz, Marc Veasey, Jane Hamilton, Lyman King, John Jenkins, Kathleen Maria Shaw, Debbie Allen, Jamaal R. Smith, Sandra Puente, Texas NAACP, Howard Jefferson, Rev. Bill Lawson, Juanita Wallace, Congresswoman Eddie Bernice Johnson, Congresswoman Sheila Jackson Lee, Congressman Al Green, Eddie Rodriguez, Milton Gerard

Washington, Bruce Elfant, Balakumar Pandian, Alex Serna, Sandra Serna, Betty F. Lopez, David Gonzalez, Beatrice Saloma, Lionor Sorola-Pohlman, Eliza Alvarado, Juanita Valdez-Cox, Josephine Martinez, Nina Jo Baker, City of Austin, and Travis County.

Pursuant to Rule 29.6, no publicly held corporation owns more than 10 percent of any corporate appellee, and no corporate appellee has a parent corporation.

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UNDERLYING CITED ORDERS

The Order and Supplemental Order of the three-judge district court are not yet published in a federal reporter. The orders are available to the Court in the Joint Appendix at 89-121 and 132-55.

JURISDICTIONAL STATEMENT

A three-judge district court in the Western District of Texas, convened under 28 U.S.C. § 2284, entered an order adopting an interim reapportionment plan for use in Texas's 2012 elections for members of the U.S. House of Representatives. The State defendants appealed this order and were denied a stay in the district court. They then sought and received a stay from this Court. This Court has jurisdiction under 28 U.S.C. § 1253 to consider the State's challenge to the interim map.

This brief addresses only Case Number 11-715, regarding the Interim Congressional Plan.

I. STATEMENT OF CASE

Entering the 2011 reapportionment process, Texas had every reason to respect minority voting rights. Had it not been for growth in Texas's minority population, the State actually would have lost congressional seats. Supplemental Appendix ("SA") 9.[1] Instead, because the State's Hispanic population

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[1] Appellees submit this Supplemental Appendix because Texas failed to include in the Joint Appendix record material designated by Appellees.

exploded and its African-American population grew rapidly, the State gained four seats in Congress. SA 9.

Texas also had every reason to understand its obligations under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Texas has been a covered jurisdiction since 1975, its inclusion prompted by its "long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process." *LULAC v. Perry*, 548 U.S. 399, 439 (2006) (internal quotation marks and citation omitted); *see also White v. Regester*, 412 U.S. 755, 767-68 (1973). Since its inclusion, the Department of Justice—under Democratic and Republican presidents alike—"has frequently interposed objections against the State and its subdivisions," *LULAC*, 548 U.S. at 440 (internal quotation marks and citation omitted), and Texas has lost more Section 5 enforcement suits than any other state. *See* 1 Voting Rights Act: Evidence of Continued Need, Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 250 tbl.4 (Mar. 8, 2006).

Despite Texas's experience and changing demography, the Legislature approached congressional redistricting in 2011 as it has so often in the past—with little concern for minority voting rights, federal law, or this Court's decisions. Rather than learning from its history, Texas chose to repeat it.

A. The Texas Legislature's Congressional Redistricting Process

The Texas Legislature received from the Census Bureau the data required for redistricting in February 2011. Although the Legislature knew that it had to have a redistricting plan passed and precleared by November 14, it moved at a snail's pace. The Legislature did not conduct a single committee hearing on congressional redistricting during its five-month regular session. The first congressional redistricting bill was not filed until May 31, 2011, after adjournment of the regular session. And after the Legislature finally passed a congressional redistricting bill nearly a month later, the Governor waited almost another month before signing it on July 18.

This slow pace was not due to any effort to listen to the concerns of minority voters or elected officials. Indeed, although Hispanics and African Americans together now comprise a larger share of Texas's population than Anglos, SA 18, 48, not a single Hispanic or African-American legislator was allowed to participate in crafting Texas's new congressional districts. Texas Senate Journal for the Eighty-Second Legislature, First Called Session (June 6, 2011) ("Senate Journal") at A-12, *available at* http://www.journals.senate.state.tx.us/sjrnl/821/pdf/82S106-06-FA.pdf; JA 709-12. As one African-American representative in the Texas House of Representatives explained, "a lot of the map drawing and a lot of the changes that were done were done in secret . . . to keep the African-American and Latino members of the redistricting committee sort of discombobulated and not really knowing what's going

on." JA 708. It is not inevitable, of course, that an entirely Anglo group of legislators will ignore the rights of minority voters, but it turned out to be what happened here.

The Anglo leadership not only excluded minority legislators from the redistricting process, but they excluded the public as well. The first and only hearing open to public testimony was held just three days after the congressional plan was released, and on June 6, 2011—the Monday after the Friday hearing—the full Senate considered the bill. Of the witnesses who were able to attend the Senate committee's one public hearing, only one supported the plan; "everybody else, every African American, every Anglo American, every Mexican American, Hispanic American, more generally speaking, every single witness testified against the plan." Senate Journal at A-14.; *see also* Texas House Journal for the Eighty-Second Legislature, First Called Session (June 14, 2011) at S46, *available at* http://www.journals.house.state.tx.us/hjrnl/821/pdf/82C1DAY08SUPPLEMENTFINAL.pdf (State Representative Dawnna Dukes: "[T]he hearing was only a shadow . . . , a box to be checked because they always knew they weren't going to let a plan pass that preserved the voice of Austin minorities.").

This delayed and abbreviated legislative process that excluded minority representatives and citizens was even worse than some of the State's previous redistricting processes. Several elected officials noted that while the 2011 redistricting process was cloaked in secrecy and backroom dealing, previous cycles had provided greater opportunity for open debate and collaboration. *See, e.g.*, Transcript of Bench Trial at

796–97, *Perez v. Perry*, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Sept. 8, 2011) (testimony of State Rep. Sylvester Turner); JA 518 (Senator Zaffrini stating that in her twenty-five years of sitting on Senate Redistricting Committees, "the redistricting process during the 2011 Legislative Session was the least collaborative and most exclusive of any [she had] experienced"). Even independent counsel for the Senate Redistricting Committee testified that "this process has been quite different from what we've seen in the past [because] . . . [n]obody has had the opportunity to study it the way it has been done in the past." Testimony of Michael Morrison, Hearing of Senate Select Committee on Redistricting (June 3, 2011), *available at* http://www.senate.state.tx.us/75r/senate/commit/c625/c625.htm, at 4:51:42. He explained that this procedure differed from the one followed in 2003, when the committee's staff "went all over the state . . . spent sixteen hours in one place, twenty in another. We sat down . . . we visited. We hired experts to do retrogression analysis . . . . [T]hat would be the way to do it this time." *Id.* at 4:52:27. The Texas Legislature, however, chose not to do it that way in 2011.

The 2011 cycle instead was marked by the Legislature's deliberate disregard for minority voting rights. Eric Opiela, counsel to the Republican congressional delegation and one of the original developers of the new congressional map, aptly summed up the Legislature's approach, testifying that key principles under the Voting Rights Act, such as racial bloc voting and electoral performance, are nothing more than "hocus-pocus" that he refused to consider in developing the congressional plan. *Texas v.*

United States, 1:11-cv-01303-RMC-TBG-BAH (D.D.C. Oct. 25, 2011), Dkt. No. 77 at 9.

Unsurprisingly, a plan crafted with little respect for minority voting rights repeatedly violated those rights. For example, just as the Texas Legislature did in the plan this Court rejected in *LULAC*, 548 U.S. 399, the Legislature again gerrymandered Congressional District 23 to leave it a nominal Latino opportunity district while ensuring that it would almost never elect the Latino preferred candidate. *See* SA 40-41 (explaining how Texas strategically removed the politically active portion of the Hispanic population and a large portion of the African-American population, replacing them with low-turnout Hispanics to reduce electoral performance of minority-preferred candidates); JA 959. The State's own expert could not stomach this maneuver, testifying: "I would not have done what was done to the 23rd." JA 678. Given this Court's clear ruling in *LULAC*, "my first advice to the legislature would be just . . . with a slight memory of history, do as little as possible to the 23rd as you can," because "enough is enough, right?" JA 680. Even Mr. Opiela, who views basic principles of the Voting Rights Act as "hocus-pocus," advised Congressman Lamar Smith: "I don't think we mess with [District 23]" because it was "barely performing"; "add R[epublican]s (which will be Anglos) and you put a neon sign on it telling the court to redraw it." JA 981. Nonetheless, the Texas Legislature did "mess with" District 23, converting it into a district in which Latinos are almost certainly unable to elect their preferred candidates.

Similarly, despite this Court's clear statement that if "a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments," *Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009) (plurality op.), the Texas Legislature did exactly that, breaking apart Congressional District 25, a district the State concedes was a crossover district in which minority voters were able to elect their candidate of choice. *See* Defs.' Resp. to Pls.' Post-trial Brs. ("Defs.' Post-Trial Resp. Br.") at 18 & n.9, *Perez v. Perry*, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Sept. 8, 2011), Dkt. No. 457. As a result of the Legislature's race-conscious shuffling of voters in and out of the district, SA 33-34, District 25 under the enacted plan "is no longer a district in which minority-preferred Congressional candidates will prevail," SA 33-34.

The Legislature's dismissive attitude toward the concerns of minority voters was further reflected in its treatment of minority legislators. In the enacted plan, for example, the Texas Legislature redrew the districts of all three African-American members of the State's congressional delegation so that none of their district offices remained in their districts. JA 769, 929-30, 932-33. Similarly, the Legislature redrew the district held by Congressman Charlie Gonzalez, Chair of the Congressional Hispanic Caucus, not only to exclude his district office but also to remove key landmarks, including the Alamo and the Convention Center named after Congressman Gonzalez's father. JA 948-49. By contrast, when Anglo Congresswoman Kay Granger's campaign office was originally drawn out of her

district, the Legislature made sure to correct the problem before adopting the final plan. JA 700-01, 963. Similarly, when Anglo Congressman Kenny Marchant requested that his district lines be changed to include his grandchildren's school, and when Anglo Congressman Lamar Smith asked that his district be drawn to include the San Antonio Country Club, the Legislature granted both requests. JA 964-65, 979.

Reviewing the congressional redistricting plan 11 days before it was adopted, Dub Maines, district director for Republican Congressman Joe Barton, grew concerned and asked his Republican colleagues: "[I]s there any reason why every effort should not be made to make the map more likely to pre-clear, especially if it doesn't hurt the political aims in any way?" JA 982-83. Even Republican staff members were concerned that their proposed plans limited the ability of minority groups to elect their candidates of choice more than was necessary to achieve their political goals. But those warnings went unheeded, as the Texas Legislature pushed through a plan that even its advisors knew was legally flawed.

B. Legal Challenges to the Congressional Map

Unsurprisingly, given the Legislature's utter disregard for minority voting rights, numerous voters, elected officials, and citizen groups filed suit challenging the Legislature's redistricting plan. Those suits—raising claims of unconstitutional racial gerrymandering, intentional discrimination, and violations of Section 2 of the Voting Rights Act—were rapidly consolidated before a three-judge panel in the Western District of Texas. *Perez v. Perry*, No. 5:11-

cv-360-OLG-JES-XR (W.D. Tex. 2011). Over the course of a two-week bench trial beginning on September 6, 2011, in San Antonio, that Court moved expeditiously to hear the evidence necessary to evaluate these claims.

The Texas district court heard abundant evidence that Texas violated Section 2 of the Voting Rights Act by going out of its way to fracture minority voters among Anglo-dominated districts instead of following traditional redistricting principles that would have led—because of explosive minority population growth—to additional minority opportunity districts. Although Texas gained four congressional seats, although Hispanic and African-American population growth created all those additional seats, and although Hispanics and African Americans together now outnumber Anglos in Texas, the congressional redistricting plan the Legislature enacted actually *reduced* the number of districts in which minority voters would be able to elect their candidate of choice. While the benchmark plan contained 11 minority opportunity districts (of 32 total), the Legislature's plan cut that number to 10 (of 36). SA 28.

Several areas of the state experienced such substantial minority population growth that any neutral line-drawing process would have yielded additional majority-minority seats. For instance, in the Dallas-Fort Worth area, spread across Dallas and Tarrant Counties, the Hispanic population jumped by 440,898, the African-American population grew by 152,825, and the white population fell by 156,742. U.S. Census Bureau, http://factfinder.census.gov; *see also* SA 25. Plaintiffs presented multiple maps

demonstrating how following neutral redistricting criteria could generate additional majority-minority districts respecting these population changes. *See, e.g.*, Plan C166 Report, District 35; Plan C202 Report, Districts 34 & 35, *available at* http://gis1.tlc.state.tx.us/. Texas, however, not only failed to draw an additional majority-minority district in this region, it went out of its way to "crack" the expanded minority population among seven oddly-shaped districts (Districts 5, 6, 12, 24, 26, 32, 33). None of these districts provides minorities an opportunity to elect their candidate of choice; in fact, although the Anglo population in this area decreased, Texas added another Anglo-majority district.

Similarly, in Harris County the population grew from 3.4 million in 2000 to 4.1 million in 2010. SA 24. All of that growth came from minorities, as the Anglo population actually declined by 70,000. SA 24. Plaintiffs proposed several plans drawing a majority-minority district in this area, *see, e.g.*, Plan C166 Report, District 36, *available at* http://gis1.tlc.state.tx.us/, but Texas chose to cancel out the County's minority population growth by redrawing District 2 to wrap around Houston and wind through Eastern Texas, *see* Plan C185, submerging the minority population in an Anglo-dominated district even though the minority group was "sufficiently large and geographically compact to constitute a majority in a single-member district." *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (stating preconditions for Section 2 claim).

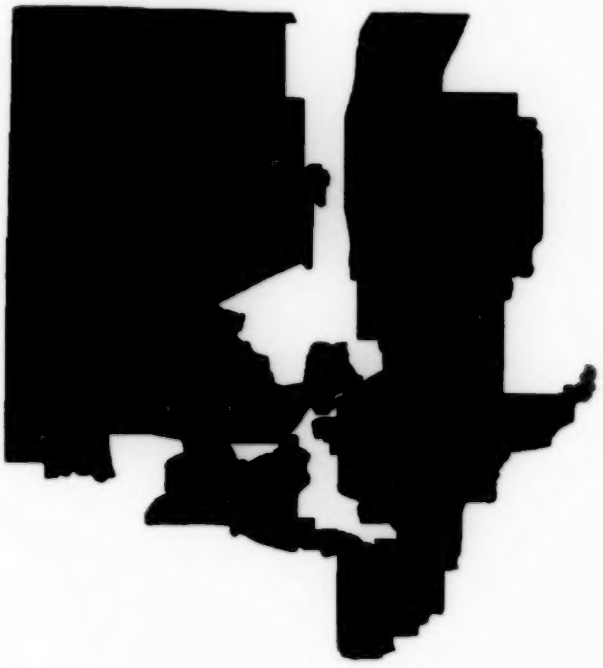
Additionally, the district court record is replete with evidence that the congressional plan was driven

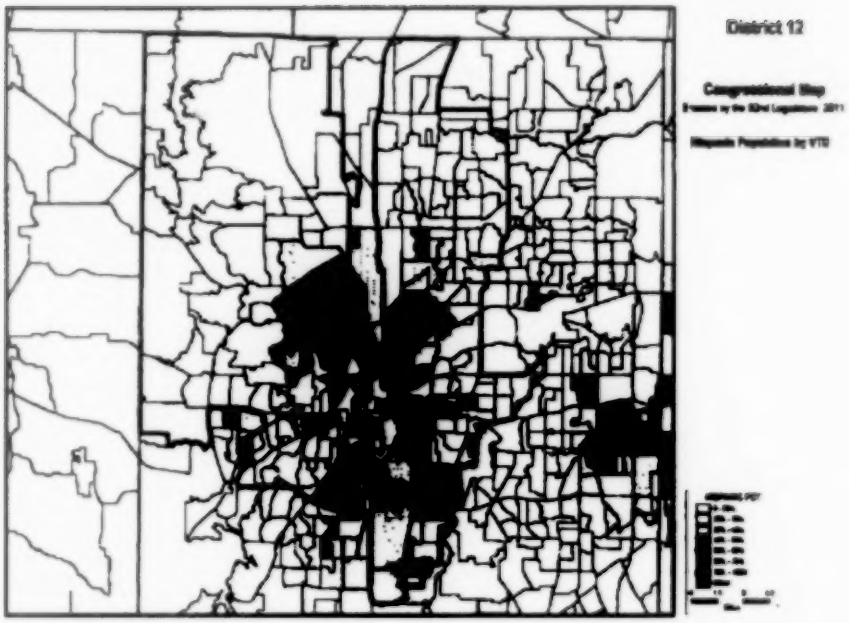
by a racially discriminatory intent to suppress minority voting rights and keep minorities "in their place," H. Rep. No. 109-478, at 43 (2006), despite their massive population growth throughout the decade. Texas managed to thwart progress for minority voters by, among other things, dismantling several districts that had elected minorities' candidate of choice. For example, as noted above, despite this Court's recent confirmation that intentionally drawing district lines to "destroy otherwise effective crossover districts" raises serious constitutional questions, *Bartlett*, 129 S. Ct. at 1249 (plurality op.), the Texas Legislature did exactly that, breaking apart an acknowledged crossover district in Congressional District 25. *See* Defs.' Post-Trial Resp. Br. 18 & n.9. Similarly, as noted above and as this Court rejected in *LULAC*, 548 U.S. 399, the Legislature again gerrymandered Congressional District 23 to leave it a nominal Latino opportunity district while ensuring that it would almost never elect the Latino preferred candidate. *See* SA 40-41.

Finally, the district court heard evidence of the extent to which race had been "the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district," *Miller v. Johnson*, 515 U.S. 900, 916 (1995), resulting in an unconstitutional racial gerrymander. As but one example, expert witness Dr. Morgan Kousser described the jagged "lightning bolt" that extends from District 26 and into District 12, carefully excising a substantial Hispanic population in Tarrant County from the African-American communities immediately surrounding the area. Transcript of Bench Trial, *Perez v. Perry*, No. 5:11-cv-00360-OLG-JES-XR at 256-57 (W.D. Tex. Sept. 6,

2011) (testimony of Dr. Morgan Kousser). As demonstrated in the shaded maps below, the lightning bolt reaches south in a narrow path to heavily Hispanic neighborhoods in Forth Worth's historic North Side, where it immediately widens to encompass virtually every heavily Hispanic neighborhood north of downtown Fort Worth. It then narrows dramatically, skirting African-American neighborhoods but picking up a narrow band of Hispanic precincts. The lightning bolt then widens to pick up the largest concentration of Hispanic voters south of downtown Fort Worth.

Texas Congressional District 12





By carefully attaching Hispanic voters to Anglo-dominated District 26 and African-American voters to Anglo-dominated District 12, Texas effectively destroyed any ability of minority voters to unite with other Hispanics or African Americans, as individual ethnic groups or as a coalition, to elect their candidate of choice. As a result, neither district is one in which minorities will have an opportunity to elect their candidates of choice.

In sum, the evidence at trial demonstrated that the Texas Legislature's congressional district map, like its congressional redistricting process, was largely governed by unlawful racial considerations, as Texas legislators knew precisely how best to, and, in fact did, pick off, split up, and drown out minority voters to ensure that minority population gains would not translate into minority electoral gains.

The district court recognized, however, that under this Court's precedent, it could not rule on any of these challenges until Texas first obtained Section 5 preclearance of its plan. *See, e.g., Branch v. Smith*, 538 U.S. 254, 283 (2003) (Kennedy, J., concurring) ("Where state reapportionment enactments have not been precleared in accordance with § 5, the district court 'err[s] in deciding the constitutional challenges' to these acts.") (quoting *Connor v. Waller*, 421 U.S. 656, 656 (1975) (per curiam)); *Wise v. Lipscomb*, 437 U.S. 535, 542 (1978). The Texas district court therefore is waiting upon Texas to complete the preclearance process before ruling on the merits of these claims. *See* JA 215-16 ("[T]he law precludes the Court from issuing a final decision on the merits until there has been a determination on preclearance.").

C. Texas's As-Yet Unsuccessful Preclearance Process

Texas, meanwhile, rather than taking "the more expeditious method" of administrative preclearance through the Department of Justice, *McCain v. Lybrand*, 465 U.S. 236, 247 (1984), instead chose to pursue the slower route of judicial preclearance. After filing a declaratory judgment action in D.C. district court, the State then chose to forgo setting a quick trial date and insisted on pursuing summary judgment as the sole avenue for resolution of the Section 5 issues. The D.C. district court specifically suggested to Texas that it reconsider its decision to rely on summary judgment, stating to Texas's counsel: "[W]ould [you] rather say, 'Okay, let's just go to trial and get this done[']' instead of try summary

judgment[?]" JA 923. But Texas rejected this option, even though numerous parties, including the Attorney General, alleged that the Texas Legislature had engaged in intentional discrimination in enacting its congressional redistricting plan, and this Court has made clear that a "legislature's motivation is itself a factual question." *Hunt v. Cromartie*, 526 U.S. 541, 549 (1999); *see also id.* at 546-47 ("The task of assessing a jurisdiction's motivation . . . is not a simple matter; on the contrary, it is an inherently complex endeavor, one requiring the trial court to perform a 'sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'") (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)).

The Attorney General and Intervenors filed briefs opposing the State's motion for summary judgment. The Attorney General argued that the entire congressional plan is retrogressive based on a statewide measure of voting opportunity. In addition, he identified two districts—Congressional Districts 23 and 27—as violating Section 5's prohibition against retrogressive effect, which would require redrawing most of the congressional map in South and West Texas. The Attorney General also argued that the plan had been enacted with a racially discriminatory purpose, undermining the legislative policy choices that drove the State's drawing of congressional district lines. Intervenors, meanwhile, not only buttressed the Attorney General's claims but also argued and offered evidence of additional Section 5 violations, including with respect to District 25 and the reduction in the absolute number of minority opportunity districts statewide.

After "extensive briefing" and "lengthy oral argument," JA 550, the D.C. district court unanimously denied the State's summary judgment motion, JA 550-51. The court determined that the State "used an improper standard or methodology to determine which districts afford minority voters the ability to elect their preferred candidates of choice and that there [we]re material issues of fact in dispute that prevent[ed]" the court from entering summary judgment for Texas. JA 550-51. Because Texas had declined to schedule a trial and no final ruling on preclearance could be issued before Texas's filing deadlines, the court noted that "[t]he District Court for the Western District of Texas must designate a substitute interim plan for the 2012 election cycle." JA 550. The D.C. district court has scheduled a Section 5 preclearance trial for the second half of January, 2012, beginning on January 17.

D. The District Court's Interim Congressional Map

Anticipating the possibility that Texas might fail to obtain preclearance and aiming to keep Texas's statutory election schedule on track, the Texas district court had allowed the parties to submit proposals for interim plans, comment on or object to the proposals, and make their case at interim plan hearings conducted between October 31 and November 4, 2011. Texas asked the district court simply to adopt its unprecleared plan, claiming that it was "appropriate for interim designation." JA 291. Numerous intervenors explained why this was inappropriate under this Court's precedent and

highlighted the many pending challenges to the Texas Legislature's plan.

After concluding the interim plan hearings, the Texas district court spent the next two and a half weeks crafting interim plans. On November 23, in light of the D.C. district court's ruling and the impending opening of candidate qualifying for Texas elections, the court published its proposed congressional plan and invited comments and objections. JA 205-06. This ruling was unanimous; no judge voiced any objection. On November 26, the court, with Judge Smith now dissenting in favor of a different plan (but not the Legislature's plan), adopted Plan C220 as the interim plan. JA 132-55. Two days later, congressional elections opened with candidate qualifying. As anticipated in the court's prior orders, on December 2 the court issued a supplemental order further explaining the governing case law and its approach to the interim plan. JA 89-121.

On December 9, this Court stayed the Texas district court's interim congressional plan and noted probable jurisdiction. This forced the district court to alter the State's statutory election schedule, moving the primaries back a month, to April 3, 2012. JA 80-88. This new schedule is premised on interim congressional and legislative maps being in place by February 1, 2012. JA 80.

II. SUMMARY OF ARGUMENT

Texas's 2011 congressional redistricting process confirms that "[m]uch remains to be done to ensure that citizens of all races have equal opportunity to

share and participate in our democratic processes and traditions." *Bartlett*, 129 S. Ct. at 1249 (plurality op.). Though Hispanics and African-Americans together now comprise a larger share of Texas's population than Anglos, neither group played any role in shaping the congressional districts that will elect Texas's members of the U.S. House of Representatives over the next decade. This was not an "equal opportunity to share and participate in our democratic processes." *Id.* Given the State's demographic changes, Texas eventually will reach a point where map drawers will be practically unable to deny minority voters an equal opportunity to elect their candidates of choice. But the Texas Legislature endeavored to postpone that date by intentionally dismantling coalition districts and minority opportunity districts, packing millions of additional minority voters into fewer minority opportunity districts than existed before, and cracking naturally occurring minority populations to prevent them from obtaining political power. Yet again, "the State took away the [minorities'] opportunity because [minorities] were about to exercise it. This bears the mark of intentional discrimination." *LULAC*, 548 U.S. at 440. Thus, the Texas Legislature's 2011 congressional redistricting plan was simply another step in Texas's "long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process." *Id.* at 439 (internal quotation marks and citation omitted).

Nonetheless, Texas asks this Court to order implementation of its plan, effectively bypassing not only Section 5 of the Voting Rights Act, but also

Section 2 and the Constitution. In Texas's view, the only right at stake here is the right of state sovereignty, and that trumps all.

Texas forgets, however, that our Constitution values other rights even more highly, including the rights of individuals to vote and to have their votes count equally, regardless of the color of their skin. We fought a war to win these rights, and they are enshrined in the Fourteenth and Fifteenth Amendments, each of which gives Congress the "power to enforce" its protections "by appropriate legislation," even over objections by states. *City of Boerne v. Flores*, 521 U.S. 507, 518 (1997) ("[M]easures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures place[] on the States."); *see also City of Rome v. United States*, 446 U.S. 156, 179 (1980) ("[P]rinciples of federalism that might otherwise be an obstacle to congressional authority are necessarily overridden by the power to enforce the Civil War Amendments 'by appropriate legislation.' Those Amendments were specifically designed as an expansion of federal power and an intrusion on state sovereignty.").

"The first century of congressional enforcement of the[se] Amendment[s], however, can only be regarded as a failure," and "Congress responded with the Voting Rights Act." *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504, 2508, 2509 (2009). Under Section 5 of the Act, of course, a covered jurisdiction such as Texas "must obtain either judicial or administrative preclearance before implementing a voting change. No new voting

practice is enforceable unless the covered jurisdiction has succeeded in obtaining preclearance." *Lopez v. Monterey Cnty.*, 519 U.S. 9, 20 (1996).

While Section 5 imposes burdens on states, the question whether those burdens are justified is neither raised nor necessary to a decision here, and it must be left for another day. The question here is how a district court should proceed when faced with an impending election and a state-enacted plan that has not received Section 5 approval. This Court's decisions give a clear answer: such a plan may not be adopted by a court. *See, e.g., id.* at 22. This Court's decisions also direct that a court facing this situation may not conduct its own analysis of whether the plan complies with Section 5 or other legal requirements. *See, e.g., Branch*, 538 U.S. at 283 (Kennedy, J., concurring) ("Where state reapportionment enactments have not been precleared in accordance with § 5, the district court 'err[s] in deciding the constitutional challenges' to these acts.") (quoting *Connor*, 421 U.S. at 656). Rather, the court's role in such a case is to adopt an interim plan to govern elections until a state-enacted plan obtains preclearance. *See, e.g., Lopez*, 519 U.S. at 23 ("The three-judge district court may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate.").

In adopting an interim plan, the court should defer to the State's policy choices reflected in any benchmark plan that has obtained preclearance and to any aspects of the new redistricting plan that the Attorney General or D.C. district court find

compliant with Section 5. But the court may not defer to state policy choices that have not been approved by those authorized to grant preclearance. *See, e.g., id.* at 22 (because the "system under which the District Court ordered the County to conduct elections undoubtedly 'reflect[ed] the policy choices' of the County," it was "error for the District Court to order elections under that system before it had been precleared") (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981)). At the very least, before preclearance is granted, courts should not defer to state policy choices that are the subject of specific challenges under Section 5, Section 2, or the Constitution.

What a court must do in this situation is exactly what the district court did here. With election deadlines looming and Texas having failed to obtain preclearance—in part because its plan is illegal and cannot be precleared and in part because Texas delayed in enacting a plan, pursued the slower route of judicial preclearance, and chose to pursue only summary judgment—the court had no choice but to adopt an interim plan. In doing so, the district court hewed as closely as it could to the benchmark plan, which had obtained preclearance. It even respected the Legislature's enacted but unprecleared plan to the extent it could without risking a violation of federal law.

Texas would have this Court reverse the district court for doing exactly what this Court has required lower courts to do throughout Section 5's history. The Court should decline. If the Court orders adoption of Texas's redistricting plan, it will not only be eviscerating Section 5, but also ordering imposition

of a racially discriminatory map that violates Section 2 and the Constitution. Even if the Court remanded and directed the district court to defer to those portions of Texas's plan not subject to pending challenges, the result would be little (if any) different from what the district court already did; the result would merely be delayed adoption of the same interim map. The Court should, therefore, affirm, both because the district court followed this Court's past instructions and also because if the district court had broken this Court's rules and evaluated the legality of Texas's plan, it unquestionably would have found the plan lacking.

III. ARGUMENT

Texas claims the district court erred by declining to adopt its proposed map because the court found no legal error in the map. This argument ignores the facts and the law. In truth, the district court found an insurmountable legal flaw in Texas's proposed plan: it had not received Section 5 approval. Once the district court made that finding, it was precluded by this Court's decisions from assessing any other deficiencies in the map and was required to adopt an interim plan. *See, e.g.*, *Branch*, 538 U.S. at 283 (Kennedy, J., concurring); *Lopez*, 519 U.S. at 23; *McDaniel*, 452 U.S. at 153. Texas suggests otherwise by citing *Upham v. Seamon*, 456 U.S. 37 (1982) (per curiam), and by casting aspersions on Section 5. These arguments do not hold water. The district court proceeded exactly as it should have in light of Texas's failure to obtain preclearance, carefully drawing an interim map that respected the most recent plan to obtain preclearance and even respecting the Legislature's proposed plan to the

extent it could without violating federal law. In asking this Court to nonetheless reverse the district court's ruling, Texas effectively asks this Court to overrule its own longstanding approach to Section 5 and to reward Texas for its delay in seeking preclearance. The Court should refuse.

A. The District Court Followed This Court's Rules in Evaluating Texas's Plan

Texas's argument effectively asks this Court to write Section 5 out of the U.S. Code. It is beyond dispute that "Section 5 requires States to obtain either judicial or administrative preclearance before implementing a voting change. A voting change in a covered jurisdiction 'will not be effective as la[w] until and unless cleared' pursuant to one of these two methods." *Clark v. Roemer*, 500 U.S. 646, 652 (1991) (quoting *Connor*, 421 U.S. at 656). "Failure to obtain either judicial or administrative preclearance" not only prevents a change from taking effect, it "'renders the change unenforceable.'" *Id.* (quoting *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982)). Indeed, "[i]f voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes." *Id.* at 652-53 (citing *Allen v. State Bd. of Elections*, 393 U.S. 544, 572 (1969)). These are far from novel concepts—they are the first principles of Section 5, repeatedly, recently, and unanimously reaffirmed by this Court. *See, e.g.*, *Lopez*, 519 U.S. at 20 ("A jurisdiction subject to § 5's requirements must obtain either judicial or administrative preclearance before implementing a voting change. No new voting practice is enforceable unless the covered jurisdiction has succeeded in obtaining preclearance.").

In a series of cases, this Court has made clear that just as a covered jurisdiction may not enforce a voting change without preclearance, neither may a district court considering a challenge to such a change allow it to take effect. First, in *United States v. Board of Supervisors of Warren County*, 429 U.S. 642 (1977), Warren County asked a three-judge district court in Mississippi to conduct its own analysis of an unprecleared change the County wanted to implement. The court found that the proposed change violated no legal requirements and ordered it into effect. *Id.* at 644. This Court unanimously reversed, holding that where a voting change has not been precleared, the district court cannot pass on its compliance with Section 5 or any other legal requirements; instead, "the inquiry of a local district court . . . is 'limited to the determination whether a (voting) requirement is covered by § 5, but has not been subjected to the required federal scrutiny.'" *Id.* at 645-46 (quoting *Perkins v. Matthews*, 400 U.S. 379, 383 (1971)); *see also McDaniel*, 452 U.S. at 150 n.31 ("Our decision in [*Warren County*] illustrates that a District Court's conclusion that a reapportionment plan proposed by a covered jurisdiction complies with constitutional requirements is not a substitute for § 5 review."). Therefore, "it was error for the District Court to determine the constitutional validity of the county's plan and to order that it be implemented, rather than limiting its inquiry . . . to the question whether the county had complied with § 5." *Id.*

Second, in *McDaniel*, 452 U.S. 130, the question was whether a county's redistricting plan, enacted at the direction of a federal court, had to receive Section

5 preclearance before it could take effect. This Court held that "whenever a covered jurisdiction submits a proposal [to a court] reflecting the policy choices of the elected representatives of the people . . . the preclearance requirement of the Voting Rights Act is applicable," so it was "error for the District Court to act on the county's proposed plan before it had been submitted to the Attorney General or the United States District Court for the District of Columbia for preclearance." *Id.* at 153.

Finally and most recently, in *Lopez*, 519 U.S. 9, Monterey County had failed to obtain preclearance for several changes to its system for electing judges. The district court decided to adopt on an interim basis Monterey County's unprecleared system, accepting the County's argument "that there is a difference between a district court's failing to enjoin an unprecleared election scheme . . . and its ordering, pursuant to its equitable remedial authority, an election under an unprecleared plan." *Id.* at 22. This Court unanimously reversed, holding that "where a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction] . . . the preclearance requirement of the Voting Rights Act is applicable.'" *Id.* (quoting *McDaniel*, 452 U.S. at 153) (alterations in original). Because the "system under which the District Court ordered the County to conduct elections undoubtedly 'reflect[ed] the policy choices' of the County," it was "error for the District Court to order elections under that system before it had been precleared by either the Attorney General or the United States District Court for the District of Columbia." *Id.*

These cases control the outcome here. Texas asked the district court to adopt its proposed redistricting plan despite its failure to obtain preclearance. JA 291. But ordering its use as an interim measure would sidestep the preclearance requirement, and it would plainly be "error for the District Court to order elections under that system before it had been precleared." *Lopez*, 519 U.S. at 22. Despite this clear law, Texas offers several reasons why this Court should deviate from its past precedent and order adoption of its map. Each argument fails.

1. *Upham* Requires No Different Result

The centerpiece of Texas's argument is that *Upham*, 456 U.S. 37, requires courts adopting interim redistricting plans to defer to legislatively enacted maps even if they have not received preclearance. *Upham* says no such thing.

In *Upham*, Texas submitted its congressional redistricting plan to the Attorney General for preclearance, and he issued a finding "that the State 'has satisfied its burden of demonstrating that the submitted plan is nondiscriminatory in purpose and effect' with respect to" 25 of the plan's 27 districts. *Id.* at 38. He nonetheless denied preclearance because of "objection[s] to the lines drawn for two contiguous districts in south Texas, Districts 15 and 27." *Id.*; *see also Abrams v. Johnson*, 521 U.S. 74, 85 (1997) (noting that in *Upham* "[t]he Attorney General had objected under § 5 . . . to a specific part of the plan," but "had approved the other 25 districts"). A Texas district court then adopted an interim map that not only redrew Districts 15 and

27, but also redrew four districts in Dallas County, districts where the Attorney General had affirmatively found no Section 5 violation. *Upham*, 456 U.S. at 39-40. Texas appealed to this Court *not* as to districts 15 and 27, but rather as to the Dallas County districts. *Id.* at 38 ("The court devised its own districts for Dallas County, and it is that part of the District Court's judgment that is on appeal here."). Thus, *Upham* involved a court deviating from portions of a state-enacted plan where the Attorney General—who has authority to evaluate plans under Section 5—had affirmatively found those portions of the plan compliant. *Upham* thus stands only for the proposition that courts should defer to those portions of a legislatively-enacted map that an authorized decision maker (the Attorney General or D.C. district court) has found compliant with Section 5, or that face no objection under Section 5, not that courts must defer to unprecleared plans generally, a rule that would render Section 5 meaningless. *Id.* at 40-41 ("*[I]n the absence of any objection to the Dallas County districts by the Attorney General*, and in the absence of any finding of a constitutional or statutory violation with respect to those districts, a court must defer to the legislative judgments the plans reflect.") (emphasis added).

Upham thus provides no support for Texas's position here. Unlike in *Upham*, where the Attorney General had found 25 of Texas's 27 congressional districts compliant with Section 5, here no body authorized to grant preclearance has found any part of Texas's plan consistent with Section 5. Rather, in the face of objections from the Attorney General and many intervenors to Texas's entire congressional redistricting plan, the D.C. district court has not

found any districts compliant. Indeed, the only Section 5 finding made so far is that "the State of Texas used an improper standard or methodology to determine" whether its plan has retrogressive effects. JA 550.

In short, while *Upham* requires district courts to defer to those portions of a legislatively enacted plan found compliant with Section 5 or facing no Section 5 objection, here Texas's entire plan is challenged under Section 5 and the only Section 5 findings go against Texas, so adopting the Texas Legislature's plan was not appropriate and certainly not required. Indeed, given the numerous valid challenges to Texas's plan that the Texas district court has properly refrained from analyzing to date, requiring deference to the Legislature's plan here would lead to the absurd result of authorizing violations of federal law. But "*Upham* called on courts to correct—not follow—constitutional defects in districting plans." *Abrams*, 521 U.S. at 85.

2. Precedent Forbade the District Court from Conducting Its Own Analysis

Texas chides the district court for refusing to adopt the State's plan without conducting a full analysis of it under Section 5, Section 2, and the Constitution. But this Court's decisions and the plain text of Section 5 dictated the district court's approach.

The Texas district court lacks jurisdiction to decide whether Texas violated Section 5, for Congress gave "exclusive authority to pass on the discriminatory effect or purpose of an election change

to the Attorney General and to the District Court for the District of Columbia." *Lopez*, 519 U.S. at 23. "This congressional choice in favor of specialized review necessarily constrains the role of the three-judge district court," which "lacks authority to consider the discriminatory purpose or nature of the changes." *Id. See also Warren County*, 429 U.S. at 645 ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General the determination whether a covered change does or does not have the purpose or effect of denying or abridging the right to vote on account of race or color.") (internal quotation marks and citation omitted). As the Texas district court observed: "[T]he Court is prevented from making Section 5 determinations not only because it lacks jurisdiction to do so, but also because as a practical reality, the three judge panel has not heard evidence regarding Section 5; nor could it hear that evidence and make those determinations without wasting an enormous amount of judicial resources and potentially reaching a result that would later be inconsistent with a D.C. Court ruling." JA 91. Indeed, had the Texas district court made a finding of likely retrogression and used that as a basis to justify interim relief, Texas surely would have objected, citing these very cases.

As for Texas's suggestion that the district court erred by declining to rule on other challenges to Texas's plan—such as those brought under Section 2 and the Constitution—this Court has made clear that it is error for a district court to consider such challenges before a plan is precleared. "[U]ntil clearance has been obtained," courts should not

"address the constitutionality of the new measure." *Wise*, 437 U.S. at 542; *see also Connor*, 421 U.S. at 656 (holding that district court erred in considering racial discrimination claims as to Mississippi laws because "[t]hose Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5"). As Justice Kennedy explained in *Branch*, the alternative rule proposed by Texas would have many harmful effects, including "forc[ing] the federal courts to undertake unnecessary review of complex constitutional issues in advance of [a preclearance] determination," thereby "frustrating the mechanism established by the Voting Rights Act." 538 U.S. at 284 (Kennedy, J., concurring). For that and other reasons, "[w]here state reapportionment enactments have not been precleared in accordance with § 5, the district court 'err[s] in deciding the constitutional challenges' to these acts." *Id.* at 283 (quoting *Connor*, 421 U.S. at 656); *see also Lopez*, 519 U.S. at 23 ("The three-judge district court may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate.").

In arguing otherwise, Texas again misunderstands *Upham*. There, this Court said that "in the absence of any objection to the Dallas County districts by the Attorney General, and in the absence of any finding of a constitutional or statutory violation with respect to those districts, a court must defer to the legislative judgments the plans reflect." *Upham*, 456 U.S. at 40-41 (emphasis added). Texas ignores the crucial first clause of this passage and focuses only on the remainder, pulling this quote out of context to suggest that a court must defer unless it

finds a constitutional or statutory violation. But in *Upham* "[t]he Attorney General had objected under § 5" only "to a specific part of the plan" and "had approved the other 25 districts." *Abrams*, 521 U.S. at 85. As the numerous other cases cited above make clear, it was only because the Attorney General "had approved the other 25 districts" that a court could even consider other challenges to those districts. *Id.*; *see also Branch*, 538 U.S. at 283 (Kennedy, J., concurring); *Lopez*, 519 U.S. at 23; *Wise*, 437 U.S. at 542; *Connor*, 421 U.S. at 656. Here, with no Section 5 approval granted as to any part of Texas's plan, and with objections pending as to the entire plan, the normal rule applied: "The three-judge district court [could] determine only whether § 5 cover[ed] [the] contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, [was] appropriate." *Lopez*, 519 U.S. at 23.

3. Preclearance, Not Submission, Is Key

Texas claims that this Court's clear precedent—that courts should not defer to unprecleared plans—applies only where a state fails to seek preclearance at all. Texas invents this distinction out of thin air, and it is refuted by Section 5's text, this Court's decisions, and simple logic.

Section 5 provides that whenever a covered jurisdiction "shall enact or seek to administer any" change in voting practices, the jurisdiction "may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such . . . [change] neither has the purpose nor will have the effect of denying or

abridging the right to vote on account of race or color." 42 U.S.C. § 1973c(a). "[U]nless and until the court *enters such judgment* no person shall be denied the right to vote for failure to comply with such" change. *Id.* (emphasis added). Thus, the plain language of Section 5 makes clear that only a ruling by the court, not the mere filing of a declaratory judgment action, allows a change to take effect.

The import of this language becomes even clearer when it is compared to the language governing administrative preclearance, which grants states more leeway. Administrative preclearance was not part of the original Voting Rights Act, but was added "after concerns arose that the declaratory judgment route would unduly delay implementation of nondiscriminatory legislation." *McCain*, 465 U.S. at 246. If a covered jurisdiction submits a change for administrative preclearance, it takes effect if "the Attorney General has not interposed an objection within sixty days after such submission, or . . . has affirmatively indicated that such objection will not be made." 42 U.S.C. § 1973c(a). Thus, unlike in the D.C. district court, in the administrative process, "silence constitutes consent." *McCain*, 465 U.S. at 247. Congress could have applied a similar rule to judicial preclearance, but it did not.

Accepting Texas's view would not only ignore this statutory distinction by turning silence into consent in the D.C. district court, but it would turn even rejection into consent by overriding the D.C. district court's finding that "Texas used an improper standard or methodology to determine" whether its plan has retrogressive effects. JA 550. Texas's mere application for preclearance would require deference,

even if denied. Unsurprisingly, this Court has never indicated that such an approach comports with Section 5; instead, the Court has repeatedly emphasized that "Congress required each jurisdiction subject to § 5, as a condition to implementation of a voting change subject to the Act, to identify, submit, *and receive approval* for all such changes." *Clark*, 500 U.S. at 658 (emphasis added).

Indeed, numerous decisions of this Court make clear that mere submission of a plan does not require a reviewing court to defer to it. For example, in *Warren County*, the County had submitted its proposals to the Attorney General before submitting them to the district court. 429 U.S. at 644. When the district court adopted one of the submitted but unprecleared plans after concluding that it violated no federal law, this Court unanimously reversed, holding: "No new voting practice or procedure may be enforced unless the State or political subdivision has succeeded in its declaratory judgment action or the Attorney General has declined to object to a proposal submitted to him." *Id.* at 645 (emphasis added). Similarly, in *Lopez* the State had filed a declaratory judgment action seeking preclearance of its election system in the D.C. district court but later voluntarily dismissed the action. 519 U.S. at 16. This Court nonetheless held that it was "error for the District Court to order elections under that system before it had been precleared by either the Attorney General or the United States District Court for the District of Columbia." *Id.* at 22 (emphasis added).

Moreover, Texas's proposed rule—that states receive an "A for effort" and automatic deference through mere submission of a plan—lacks any logical

basis and would create backwards incentives for states. It makes no sense for submission of a plan to trigger deference when the whole point of submission is to allow a decision on preclearance. This Court has been crystal clear that "[i]f a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the change." *Id.* at 20. No decision of any court, and no principle of logic, suggests that this rule changes as soon as a jurisdiction submits a proposed change. Were that the rule, jurisdictions would have perverse incentives to drag their feet in obtaining preclearance; so long as a submission is merely pending, it deserves deference, but an actual preclearance decision might end that deference. In such circumstances, a jurisdiction would be better off constantly changing and resubmitting its voting rules than it would be actually trying to see any through to preclearance, but the whole purpose of Section 5 was to prevent such gamesmanship. *See, e.g.*, *McDaniel*, 452 U.S. at 151 (refusing to allow changes adopted by covered jurisdictions in response to court orders to take effect without preclearance because "if covered jurisdictions could avoid the normal preclearance procedure by awaiting litigation challenging a refusal to redistrict after a census is completed, the statute might have the unintended effect of actually encouraging delay").

4. For Purposes of This Case, Section 5 Should Be Enforced as Written

Much of Texas's attack on the district court's ruling amounts to nothing more than an attack on the wisdom of Section 5 itself. For example, Texas repeatedly suggests that its failure to obtain

preclearance cannot alone justify refusal to implement its proposed redistricting plan. But this ignores Section 5. "If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes" without any further showing. *Clark*, 500 U.S. at 652-53 (citing *Allen*, 393 U.S. at 572). Indeed, "[f]ailure to obtain either judicial or administrative preclearance" not only prevents a change from taking effect, it "'renders the change unenforceable.'" *Id.* at 652 (quoting *Hathorn*, 457 U.S. at 269).

While Texas is free to cast aspersions on Section 5, its attacks on the wisdom of the statute are legally irrelevant here and should be ignored, for Texas has never challenged the constitutionality of Section 5 in this litigation and should not be heard to do so now. *See, e.g.*, *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (per curiam) (confirming the general rule that this Court will not review "'questions not pressed or passed upon below'") (quoting *Duignan v. United States*, 274 U.S. 195, 200 (1927)).

Whatever Texas may think of Section 5, it is the law and should be given the respect due to one of the landmark pieces of legislation of our time. "'The Congress is a coequal branch of government whose Members take the same oath [Justices] do to uphold the Constitution of the United States.'" *Nw. Austin*, 129 S. Ct. at 2513 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981)). Moreover, "[t]he Fifteenth Amendment empowers 'Congress,' not the Court, to determine in the first instance what legislation is needed to enforce it." *Id.* "Congress amassed a sizable record in support of its decision to extend the

preclearance requirements," *id.*, and the adequacy of that record is neither argued nor necessary to a decision here.

Accordingly, this Court should evaluate the district court's decision based on Section 5's text and this Court's decisions interpreting it. Applying that standard, it is clear that the approach Texas urges would have required the district court to flatly ignore existing law. It is understandable for Texas to demand as much, for that is the only way it can achieve adoption of a discriminatory and unconstitutional map, but it is no basis for reversal.

B. The District Court's Interim Map Is an Appropriate Response to an Enacted Map that Is Illegal and Not Precleared

There is no question—not even from Texas—that the three-judge panel had to adopt an interim map for the 2012 election. There was no alternative because the benchmark map violated the one-person, one-vote standard, the legislatively enacted map was subject to countless legal challenges and had yet to receive Section 5 approval, and important election deadlines were rapidly approaching. Texas argues, however, that the district court erred in adopting the map it did. The State's argument fails under existing precedent and even under its own proposed standard.

In the district court, the only "interim map" Texas proposed was the map the Legislature passed. *See* JA 291 (State urging that its unprecleared map is "appropriate for interim designation"). Texas did not seek deference, it sought complete acquiescence. But as explained above, adopting that map wholesale

was not an option. No part of the map had received Section 5 approval, the entire map was subject to numerous legal challenges, the district court lacked jurisdiction to consider the Section 5 challenges, and the district court was not allowed to consider other challenges under this Court's precedent.

Here, Texas seems to recognize that its position in the district court was untenable. Abandoning its trial court absolutism, Texas now argues that the district court should have fashioned a congressional map that "narrowly address[ed] likely legal errors while respecting the lines actually drawn by the legislature wherever possible." Emergency Appl. for Stay of Interlocutory Order Directing Implementation of Interim Texas Congressional Redistricting Plan Pending Appeal to the United States Supreme Court at 5, *Perry v. Perez*, No. 11A536 (Nov. 30, 2011) ("Congressional Stay Application"). That approach, however, also conflicts with this Court's precedent, and, ironically, the result would look no more like Texas's proposed map than does the interim map. Rather, the central difference between the district court's interim map and the court-enacted map Texas desires would be a profoundly disruptive delay.

1. The District Court Took the Proper Approach Under This Court's Precedent

Texas claims that the district court's approach to crafting the interim plan was "fundamentally unmoored" from "any properly constrained judicial inquiry" or "any discernible legal standard." Reply in Support of Emergency Application for Stay of

Interlocutory Order Directing Implementation of Interim Congressional Redistricting Plan at 6, *Perry v. Perez*, No. 11A536 (Dec. 5, 2011) ("Congressional Stay Reply"). Neither the court's process nor the map that resulted from that process bears any resemblance to this description.

As the district court explained, "[i]n drawing this Congressional map, all proposed maps, including the State's enacted map, were considered." JA 137. "The Court sought to create a plan that maintain[ed] the status quo pending resolution of the preclearance litigation to the extent possible, complie[d] with the United States Constitution and the Voting Rights Act, and embrace[d] neutral principles such as compactness, contiguity, respecting county and municipal boundaries, and preserving whole VTDs [(voting tabulation districts)]." JA 137-38. Throughout, the court "also sought to balance these considerations with the goals of state political policy," as reflected in the enacted plan, to the extent it could without risking a violation of federal law. JA at 138. Deviations from the State's proposed map were driven by two basic needs firmly rooted in precedent: (1) to adopt a map that did not itself violate federal law; and (2) to adopt a map that could be implemented quickly. JA 137-38.

This was precisely how the district court was supposed to proceed. The court could not adopt Texas's proposed plan or use it as the benchmark because it had not received Section 5 approval. *See, e.g.*, *Lopez*, 519 U.S. at 22 ("[W]here a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction] . . . the preclearance requirement of the Voting Rights Act is applicable.'")

(quoting *McDaniel*, 452 U.S. at 153) (alterations in original); *Abrams*, 521 U.S. at 96 (holding that a plan denied preclearance "could not operate as a benchmark"); *Clark*, 500 U.S. at 652 ("Failure to obtain either judicial or administrative preclearance 'renders the change unenforceable.'") (quoting *Hathorn*, 457 U.S. at 269). Instead, the district court started from the benchmark plan and began by making the changes necessary to comply with one-person, one-vote requirements. JA 139. In making these changes, the district court recognized that it could not itself violate Section 5 by causing "retrogression in [minority] voting strength," so it maintained districts in the benchmark plan that allowed minority voters to elect their candidates of choice. JA 138-39 (quoting *Abrams*, 521 U.S. at 96 ("[I]n fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases.")). This effort, required by law, JA 139, explains much of the difference between the interim map and Texas's proposed map. *See, e.g.*, JA 140 (describing the "difference between the Court's plan and the enacted plan" as primarily "attributable to maintaining district 29 as in the benchmark to avoid retrogression and maintain the status quo").

In addition to complying with Section 5, the district court had to minimize split VTDs in the interim map to ensure that it could be "implemented under severe time constraints." JA 90. "After hearing evidence at trial and in the interim plan hearing, it became clear that cutting VTDs would create enormous administrative and financial difficulties for local governments preparing for an election at the eleventh hour." JA 102; *see also Vera v. Bush*, 933 F.

Supp. 1341, 1347 (S.D. Tex. 1996) (discussing the "troubling" hurdles imposed by split VTDs). Avoiding split VTDs led to many variations from Texas's proposed plan (which split over 400 VTDs), but it was "practical realities" inherent to the District Court's task—not some insidious motive, as Texas seems to imply, Congressional Stay Reply 6—that required the District Court to minimize split VTDs. JA 90.

Though the district court could not adopt Texas's proposed map for the reasons already stated, it "gave as much consideration to the State's enacted map as possible." JA 90. Indeed, "after maintaining current minority districts and adding in the new districts, [the district court] inserted a number of districts with minimal change from the enacted plan where possible." JA 147. As a result, in the interim plan:

> district 1 has a 97.2% population overlap with district 1 in the enacted plan. District 3 has a 97.8% population overlap with the enacted plan. District 4 has a 96.5% population overlap with the enacted plan. District 5 has a 94% population overlap with the enacted plan. District 8 has a 92.7% population overlap with the enacted plan. District 11 has a 96.7% population overlap with the enacted plan. District 13 has a 98.6% population overlap with the enacted plan. District 14 has a 97.2% overlap with the enacted plan. District 19 has a

> 99.2% population overlap with the enacted plan.

JA 147-48 n.30. These substantial areas of overlap refute Texas's repeated claims that the district court "disregard[ed]" the enacted map. *See, e.g.*, Congressional Stay Application 4, 12, 13, 19, 21, 23. On the contrary, the court "deferred" to Texas's map where it could without risking a violation of Section 5.

Under different circumstances, this Court's precedent may have required greater deference to Texas's map. For example, if the D.C. district court had found specific parts of the map compliant with Section 5, the Texas district court would have had to defer to those portions under *Upham*, unless it found some other legal violation. 456 U.S. at 38-40. *Upham* also suggests that even if the D.C. court had not approved parts of the plan, any portion of the plan to which no party objected in the Section 5 proceeding should also receive deference, unless it suffered from some other legal flaw. *Id.* at 40-41 ("[I]n the absence of any objection to the Dallas County districts by the Attorney General, and in the absence of any finding of a constitutional or statutory violation with respect to those districts, a court must defer to the legislative judgments the plans reflect.").

Neither of these conditions was met as to Texas's congressional redistricting plan. The D.C. district court has not found any parts of the congressional redistricting plan compliant; indeed, its only finding to date is that "the State of Texas used an improper standard or methodology to determine" whether its plan has retrogressive effects.

JA 550. Moreover, contrary to Texas's suggestion, *see* Congressional Stay Application 3, 11, every part of Texas's congressional redistricting plan has been challenged in the Section 5 proceeding. *See, e.g.*, JA 94 (confirming that the Attorney General's challenges were not "limited to any particular district or districts" (internal quotation marks omitted)); *see also* JA 95 ("The intervenors also assert that while certain districts exhibit characteristics that are indicative of discriminatory purpose, they are challenging the plans in their entirety."). There was thus no basis for greater deference here.

Comparing the interim congressional map to the interim state Senate map confirms that the district court understood these distinctions. In the Section 5 proceedings as to Texas's state Senate redistricting plan, only one district was challenged as violating Section 5. JA 407. As to that map, the district court "maintain[ed] the status quo from the benchmark plan" with regard to the single challenged Senate district "but otherwise [used] the enacted map as much as possible." JA 408. The difference in the district court's approaches to the two plans illustrates the court's understanding of Section 5 and this Court's precedents and its efforts to defer to Texas's policy choices wherever these authorities allowed it to do so. It also confirms that in adopting an interim congressional map, the district court carefully complied with the law. It is Texas's proposed approach, not the district court's decision, that ignores precedent and the text of Section 5.

2. Even Under Texas's Proposed Standard, the District Court's Interim Map Is Proper

Texas broadly criticizes the district court's approach, claiming the court erred by making "no findings as to the likelihood of any constitutional or statutory violation." Congressional Stay Application 14. As noted above, however, controlling Supreme Court precedent *prevented* the court from making such findings in the absence of preclearance. This was not the only hurdle. As a practical matter, what Texas demands would have led to profoundly disruptive delay. JA 90, 99. With respect to the numerous Section 5 concerns that have prevented preclearance of the enacted map, the District Court, "has not heard evidence" on them. JA 91. With respect to the multitude of other statutory and constitutional challenges—both district-by-district and statewide—the District Court did all it could prior to preclearance, *see* JA 100 (describing weeks of trial and hearings), but requiring rulings as to the "close to fifty separate challenges to three different electoral maps" would necessarily have led to further delay, JA 100.

In any event, there is little reason to think that the analysis demanded by Texas would produce a map that looks anything more like the enacted map than does the interim map. Texas now argues that the district court's map should have "narrowly address[ed] likely legal errors while respecting the lines drawn by the legislature wherever possible." Congressional Stay Application 5. But the district court "inserted a number of districts with minimal change from the enacted plan where possible." JA

147. Many of the district court's other deviations from the enacted map were necessary to allow the interim plan to be implemented quickly, and would have been required even if the court had otherwise adopted Texas's proposed map. JA 103 ("[E]ven if the Court was required to give *Upham* deference to the interim maps, the Court would still have needed to make the changes to the uncontested districts to correct cuts in the VTDs that would have impeded implementation of the plan under intense time constraints."); *see also* JA 90 ("[T]he Court's obligation to ensure that the interim map . . . is capable of being implemented under severe time constraints . . . prevents the Court from adopting even the unchallenged districts from the enacted plan wholesale.").

More importantly, reviewing Texas's district-by-district challenges to the interim map demonstrates that the vast majority of the interim plan's deviations from the enacted plan would have been required if the district court had analyzed the "likely legal errors" in Texas's proposed map. Congressional Stay Application 5.

One of Texas's most prominent challenges concerns District 23, a Hispanic opportunity district that required this Court's protection in *LULAC*, 548 U.S. 399. Congressional Stay Application 21-22. Despite this history and Texas's continued legal violations as to District 23, Texas is now adamant that the district court should have adopted wholesale the District 23 contained in the enacted map. Yet Texas's failures with respect to this district—prominent among them, its failure to meet its Section 5 burden—were glaring; even the State's own

expert conceded during the Texas trial that, despite the State's assertions to the contrary, the Legislature had failed to draw District 23 as a minority opportunity district. JA 678. Unsurprisingly, District 23 was the subject of multiple challenges before the D.C. district court, both with respect to its retrogressive effect and its discriminatory purpose. *See, e.g.*, JA 577, 582-85, 588-90; *see also* JA 603 ("This stark resemblance of the State's action concerning the proposed Congressional plan to that action found by the Court in *LULAC* as evidencing intentional discrimination during the previous redistricting cycle, suggests strongly that such action 'bears the mark' of intentional discrimination."). District 23 likewise was the subject of numerous statutory and constitutional challenges in the two-week trial in Texas. *See, e.g.*, Post-Trial Br. of Pls. Tex. Latino Redistricting Task Force et al. ("TLRTF Post-Trial Br.") at 5, 35-43, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Oct. 8, 2011), Dkt. No. 416; Post-Trial Br. (Corrected) of Rodriguez Pls. ("Rodriguez Post-Trial Br.") at 3, 26, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Oct. 11, 2011), Dkt. No. 424. Given these myriad challenges and the clear illegality of the district, it would have been clear error—even under Texas's proposed standard—for the district court to use the challenged, unprecleared, discriminatory, and otherwise illegal District 23 advanced by Texas.

A similar analysis governs District 27, a second target of Texas's attack. Congressional Stay Application 22-23. District 27 was a minority opportunity district in the benchmark plan. The enacted plan tore it apart, moving several hundred thousand Hispanics into an Anglo-majority district

and eliminating the district as a minority opportunity district. Not surprisingly, this transparent act of retrogression features prominently in the United States' legal challenge to the State's enacted plan. *See, e.g.*, JA 578. Texas's destruction of District 27 plays a similarly central role in the Section 2 and constitutional challenges before the district court. *See, e.g.*, TLRTF Post-Trial Br. at 5, 42-43; Rodriguez Post-Trial Br. at 3-4. As was the case with District 23, even under Texas's proposed standard it would have been clear error for the district court to adopt the version of District 27 advanced by Texas.

District 33 is a third prominent target of Texas's attack, enjoying an entire section in Texas's brief, which refers to the district derisively as a "'coalition district' in North Texas that joins African-American, Latino, and Asian populations in an effort to form a multi-ethnic minority-controlled district." Congressional Stay Application 17. Texas insists that the District Court should have adopted the legislatively enacted District 33, but under Texas's proposed standard the district court could not possibly have adopted that district because, as alleged by both the Attorney General and intervenors and as confirmed by the record before both the Texas and the D.C. courts, the enacted plan's District 33 reflected the State's failure to draw majority-minority districts required by Section 2, was the product of intentional discrimination, and contributed to the enacted map's statewide retrogressive effect. *See, e.g.*, JA 598 ("Proposed districts in the Dallas-Fort Worth area were purposely manipulated to decrease current and future minority voting strength."); *see also* Plan

C166 Report, District 35; Plan C202 Report, Districts 34 & 35, *available at* http://gis1.tlc.state.tx.us/ (Plaintiffs proposing multiple majority-minority districts in the Dallas-Fort Worth area based on minority population growth). Texas's current allegation—that the district court, in creating interim District 33, somehow was motivated by illegal race-based considerations—is particularly ironic in light of this background. Congressional Stay Application 18-19. The allegation is also untrue. There is a simple, straightforward, and expressly articulated reason why interim District 33 includes such a high percentage of minorities: the population growth in that area was overwhelmingly comprised of minorities. JA 146-47. Indeed, Texas's protracted and convoluted efforts to avoid drawing District 33 as a minority opportunity district, reflected in its decision instead to fracture minority populations among Anglo-dominated districts, illustrate the discriminatory purpose motivating the enacted plan. *See, e.g.*, JA 600-01 ("[I]n the Dallas-Fort Worth area, the State has pulled strangely-shaped minority population areas out of certain districts in order to submerge them in larger Anglo populations and to reduce minority voting strength . . . . The data utilized in making some of these changes were race-based, as opposed to partisan."). In short, the district court could not have adopted the enacted District 33 even under Texas's proposed approach. Instead, it would have been required to do precisely what it did here: in the absence of a benchmark district, to draw its own based on neutral redistricting principles.

Yet another target of Texas's attack is District 25. As with enacted District 33, the District 25 drawn by the Legislature is both a product of

intentional discrimination and a contributor to the enacted map's statewide retrogressive effect. Rodriguez Post-Trial Br. at 16-25; Rodriguez Pls.' Post-Trial Resp. Br. at 8-11, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Oct. 21, 2011), Dkt. No. 458; Gonzales Intervenors' Statement of Material Facts in Opp'n to Pl.'s Mot. for Summ. J. at 3-5, No. 1:11-cv-01303-RMC-TBH-BAH (D.D.C. Oct. 25, 2011), Dkt. No. 77. That District 25 in the benchmark plan is a "crossover" district does not, as Texas suggests, render it utterly defenseless against race-based tampering. On the contrary, this Court recently recognized that "if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." *Bartlett*, 129 S. Ct. at 1249. That is exactly what Texas did as to District 25, a district the State concedes was previously a crossover district in which minority voters were able to elect their candidate of choice. Defs.' Post-Trial Resp. Br. 18 & n.9. Thus, yet again, had the district court followed Texas's proposed approach, deferring to Texas's proposed District 25 would not have been an option.

Texas lodged its final attack against District 35. Congressional Stay Application 23. On one level, the attack is somewhat surprising, insofar as interim District 35 was drawn "consistent with the Legislature's choice to create a new Latino opportunity district and with its general choice of location in the enacted plan." JA 142. To that end, the court drew District 35 as a new minority opportunity district anchored in Bexar County and extending northeast along the I-35 corridor and

reflecting the massive population growth in the area. JA 142–43. To the extent that interim District 35 differs from the enacted District 35, the differences largely can be explained by the court's treatment of District 25. The drawing of this adjacent district required corresponding adjustments to District 35, and the District Court made these adjustments pursuant to neutral redistricting principles, including incorporating state political policy as reflected in the enacted map to the extent it could. *See* JA 141-43.

In short, the District Court made decisions "consistent with the Legislature's choice" and "gave as much consideration to the State's enacted map as possible." JA 90, 142. It refrained only from "rubberstamping" challenged districts, JA 90, districts that would have been rejected even under Texas's proposed approach. The result is a map that looks as much like the enacted map as any map adopted under Texas's proposed standard could have.

3. Texas's Description of the Record is Misguided at Best

In an effort to bolster its case—or perhaps as an explanation for how it reached its problematic conclusions—Texas has described the lower court proceedings in a manner that is, at best, misguided, and in all events inconsistent with the actual record. Three errors warrant particular mention.

First, it is simply incorrect to suggest that the Attorney General—much less the other litigants in the preclearance proceedings—challenged only two of the 36 districts contained in the enacted plan. *See*

Congressional Stay Application at 3, 11. Both the Attorney General and the other litigants challenged the map statewide. As the District Court explained:

> The United States has stated that the evidentiary basis for its claim of discriminatory intent "is not limited to any particular district or districts but rather extends to the kinds of direct and circumstantial evidence that the Supreme Court identified as probative of discriminatory purpose in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977)."... The intervenors also assert that while certain districts exhibit characteristics that are indicative of discriminatory purpose, they are challenging the plans in their entirety.

JA 94-95 (citation omitted). Properly characterized, the nature of these challenges makes even clearer the flaws in Texas's arguments, particularly its claim that the District Court's decision is somehow in tension with the partially precleared plan in *Upham*.

Texas similarly mischaracterizes the proceedings in this case when it claims that the "one lodestar" guiding the district court "was a belief, based on a misreading of this Court's precedents that it could not give any weight to the duly enacted legislative map, lest it give effect to an unprecleared legislative map." *See* Congressional Stay Application 2. As even a cursory review of the court's interim

map and Congressional Order confirms, this characterization of the district court opinion is not only wrong with respect to "this Court's precedents," it is also wrong with respect to its characterization of the record. Contrary to Texas's suggestion, the court most certainly *did* take into account "state political policy," as reflected in the enacted map, to the extent it could. It is similarly misguided to suggest that no other "lodestar" guided the court's decisions; the court's careful and thorough description of its process is utterly irreconcilable with such a contention. The concession of the dissenting judge, whom Texas quotes throughout its briefing, is telling: even he agreed that the interim congressional plan was "an honest and diligent effort to achieve what an interim plan should do," JA 151. Indeed, he had joined with the majority in proposing the very same plan before abruptly changing his mind. JA 161.

Finally, Texas accuses the court of "believ[ing] itself free (indeed, compelled) to chart its own course and redraw the entire map based on its own assessment of 'state political policy.'" Congressional Stay Application 7 (quoting JA 138). But this reference to "state political policy" merely signifies the district court's efforts to incorporate the enacted map where legally permissible. It was through this approach that the district court was able to strike the difficult and proper balance between the competing mandates before it.

In sum, the District Court approached its redistricting task in a systematic, principled, and legally sound manner. It began with the benchmark map, as was required by this Court's precedent and Section 5; it made required adjustments in a narrow

and appropriate manner; and it incorporated "state political policy," as reflected in the enacted map, to the extent it could without violating federal law. Although Texas is now demanding a novel standard—that the court fashion a congressional map that "narrowly address[es] likely legal errors while respecting the lines actually drawn by the legislature wherever possible," Congressional Stay App 5—that approach is not legally permissible. Moreover, even if it were, it would not produce a map that looks anything more like the enacted map than does the interim map. Its primary effect instead would be a profoundly disruptive delay.

IV. CONCLUSION

Race was a central consideration in Texas's 2011 congressional redistricting process, as legislators strategically shuffled minority voters and flouted minority voting rights. This focus on race was the only way that Anglo elected officials currently in power could ensure that, despite massive minority population growth, minority voters gained no political power. The Legislature's approach was also a reminder that "[m]uch remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions." *Bartlett*, 129 S. Ct. at 1249 (plurality op.).

It is now up to this Court to determine whether, in Texas, "citizens of all races [will] have equal opportunity to share and participate in our democratic processes." *Id.* In the name of state sovereignty, Texas asks this Court to order adoption of a racially discriminatory map that lacks

preclearance under Section 5 and violates Section 2, Section 5, and the Constitution. This approach not only ignores decades of this Court's precedent, it also forgets that the Civil War Amendments mean that state sovereignty no longer includes the power to trample on minority voting rights.

Applying this Court's precedent, the district court here did precisely what it was supposed to do. All agree that the court had no choice but to adopt an interim plan. In doing so, the district court hewed as closely as it could to the benchmark plan, which had obtained preclearance, and it respected the Legislature's enacted but unprecleared plan to the extent it could without risking a violation of federal law.

Even if the district court had ignored precedent and used Texas's proposed approach—adopting a congressional map that "narrowly address[es] likely legal errors while respecting the lines actually drawn by the legislature wherever possible," Congressional Stay App 5—the result would have been no closer to Texas's proposed plan than is the plan the district court already adopted. The reason is that Texas's enacted plan is so shot through with "likely legal errors" that little of it could be adopted.

In short, neither existing precedent nor Texas's proposed deviation from it can justify the result Texas seeks. Texas nonetheless demands that this Court place its imprimatur on the State's 2011 congressional reapportionment plan, a plan that continued Texas's "long, well-documented history of discrimination." *LULAC*, 548 U.S. at 439. The Court should decline.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

REPORT ON MINORITY AND WHITE REPRESENTATION UNDER THE TEXAS CONGRESSIONAL DISTRICT PLANS C185 AND C100

Stephen Ansolabehere, Professor of Government, Department of Government, Harvard University, Cambridge, Massachusetts, October 21, 2011

I. Statement of Inquiry

I have been asked to examine representation of Whites, Hispanics, and Blacks in the Congressional District plans adopted and considered by the Texas State Legislature following the 2010 Census and 2011 apportionment. I have also been asked to examine demographics, voting patterns, and district boundaries in specific counties and their surrounding areas, especially Bexar County, Dallas County, Harris County, Nueces County, Tarrant County, Travis County, and the area encompassed in South and Southwest Texas.

The primary purpose of this analysis is to assess whether the Congressional District map adopted by the Texas State Legislature reduced the opportunities of minority voters to elect their candidates of choice. I am asked to compare specific districts within Plan C100 and Plan C185 to determine if any districts that were minority opportunity districts under Plan C100 are no longer so under Plan C185, and I have been asked to

determine whether Hispanics and Blacks have on net lost representation in the state. Finally, I have been asked to determine whether Plan C185 provides minority voters reasonable opportunities to elect candidates of their choice to the U. S. House of Representatives and whether Plan C185 is in line with general principles of democratic representation, such as majority rule.

II. Background and Qualifications

I am a professor of Government in the Department of Government at Harvard University in Cambridge, MA. Formerly, I was an Assistant Professor at the University of California, Los Angeles, and I was Professor of Political Science at the Massachusetts Institute of Technology, where I held the Elting R. Morison Chair and served as Associate Head of the Department of Political Science. At UCLA and MIT, I taught PhD level courses on applied Statistics in the Social Sciences. I directed the Caltech/MIT Voting Technology Project from its inception in 2000 through 2004, am the Principal Investigator of the Cooperative Congressional Election Study, a survey research consortium of over 250 faculty and student researchers at more than 50 universities, and serve on the Board of Overseers of the American National Election Study. I am a consultant to CBS News' Election Night Decision Desk. I am a member of the American Academy of Arts and Sciences (inducted in 2007).

My areas of expertise include American electoral politics and public opinion, as well as statistical methods in social sciences. I am author of

numerous scholarly works on voting behavior and elections, with particular focus on the application of statistical methods. This scholarship includes articles in such academic journals as the Journal of the Royal Statistical Society, the American Political Science Review, the American Economic Review, the American Journal of Political Science, Legislative Studies Quarterly, the Quarterly Journal of Political Science, Electoral Studies, and Political Analysis. I have published articles on issues of election law in the Harvard Law Review, Texas Law Review, Columbia Law Review, New York University Annual Survey of Law, and the Election Law Journal, for which I am a member of the editorial board. I have coauthored three scholarly books on electoral politics in the United States, The End of Inequality: Baker v. Carr and the Transformation of American Politics, Going Negative: How Political Advertising Shrinks and Polarizes the Electorate, and The Media Game: American Politics in the Media Age. I am coauthor with Ted Lowi, Ben Ginsberg, and Ken Shepsle of American Government: Power and Purpose, a college textbook on American government. My curriculum vita with publications list is attached to this report.

I have worked as a consultant to the Brennan Center in the case *McConnell v. FEC*, 540 US 93 (2003). I have testified before the U. S. Senate Committee on Rules, the U. S. Senate Committee on Commerce, the U. S. House Committee on Science, Space, and Technology, the U. S. House Committee on House Administration, and the Congressional Black Caucus. I filed an amicus brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U. S. Supreme Court in the case of *Northwest Austin Municipal Utility District*

Number One v. Holder, 557 US (2009). I am consultant for the Rodriguez plaintiffs in *Perez v. Perry*, currently before the District Court in San Antonio, Texas, and I am consultant for the Guy plaintiffs in *Guy v. Miller* in Nevada state court. I am compensated at the rate of $400 per hour.

III. Sources of Information

All of the data and information used in this report come from the U. S. Census Bureau and the Texas Legislative Council. The Texas Legislative Council provides geographic information, demographic information, and election results at the level of the Voting Tabulation District (VTD), and it produces reports that aggregate that information to the level of the Congressional District for each plan. The information available that was used in this report includes maps, reports, and spreadsheets. We obtained data from their main website http://www.tlc.state.tx.us/redist/ redist.html and ftp site ftp://ftpgis1.tlc.state.tx.us/DistrictViewer/congress/. The Texas Legislative Council is the primary source of the information used in this report.

The Texas Legislative Council produced an analysis of Citizens of Voting Age Population in each district in Plan C185 on June 15, 2011 and for Plan C100 on August 2, 2011. In addition, I contacted the American Community Survey from the U. S. Bureau of the Census and obtained information provided on the website of the U. S. Bureau of the Census (www.census.gov). The data consist of the 2010 Census enumeration for Texas and the average of the American Community Survey for the years 2005-2009.

The Texas Legislative Council also provides information on Spanish Surname Voter Registration (SSVR). I do not use these data in my assessment, as I am unsure of their quality. We can measure potential errors in SSVR using VTDs where the Census 2010 Enumeration indicates No Hispanics of Voting Age and where Census 2010 indicates that all people are Hispanics of Voting Age. There are 74 Precincts in which Census 2010 counted no Hispanic persons of Voting Age. Three percent of all registered people in these areas are identified as having Spanish Surnames. These must be False Positives - people identified as Hispanics who clearly cannot be according to Census 2010. There are six precincts where the only persons who could be registered are Hispanics. Forty-four (44) percent of all registered persons in these precincts have Spanish Surnames, but according to Census all must be Hispanic. These are False Negatives, and in these all-Hispanic precincts the errors occur at a very high rate. Consequently, I only use the Census data in measuring racial composition of the electorate.

IV. Analysis

The State of Texas experienced profound demographic changes between the 2000 and 2010 Census. The State added 4.3 million people from 2000 to 2010; two thirds of them were Hispanics. Only about 10 percent of the additional persons in the state were White, and roughly 10 percent were Black. In 2000, the State was majority White; it is now plurality White. And Hispanics are the plurality and Whites the minority in the five most populous counties, which contain half of the population of the State of Texas.

The State's new Congressional District map does not reflect those changes. In fact, Hispanics are worse off than under the prior plan (C100). That conclusion is borne out in the following factual findings.

First, compared with the existing Congressional District plan (C100), the new district plan (C185) reduces the number of seats in which Hispanics have an opportunity to elect their candidates of choice. Under Plan C100, eleven (11) Congressional Districts are configured in such a way that Hispanics and Blacks have an opportunity to elect their candidates of choice. These were CDs 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, and 30. Under Plan C185, ten (10) Congressional Districts are configured in such a way that Hispanics and Blacks have an opportunity to elect their candidates of choice. These are CDs 9, 15, 16, 18, 20, 28, 29, 30, 34 and 35. See Section C.1, pages 30-34.

Second, Plan C185 sufficiently altered three existing Hispanic opportunity districts so that minorities can no longer elect their preferred candidates in those districts. Districts 23 and 27 were majority Hispanic and Hispanic performing districts under C100. District 27 was transformed into a majority White district. District 23 was reconfigured so that it is no longer an effective district of Hispanic preferred candidates. District 25 was a cross-over district in which Whites split their votes evenly, and Hispanics and Blacks were pivotal in choosing the winner. It was dismantled entirely to construct a new Hispanic majority district (CD 35). The net effect of these changes was a loss of 1 Hispanic opportunity district statewide. See sections C.3 and C.4, pages 34-43.

Third, the dramatic changes in Whites' and Hispanics' shares of the population are not reflected in the composition of districts. Even though Whites' share of the population declined from 52 percent to 45 percent, they remain the majority in 70 percent of Congressional Districts in the State. Even though Hispanics' share of the population grew from 32 to 38 percent, they remain the majority in just 22 percent of Congressional Districts in Texas. See B.1.

Fourth, Hispanics account for most of the growth in the Citizen Voting Age Population in the state, the eligible electorate. From 2000 to 2010, the number of Hispanic citizens of voting age increased by 1.1 million persons. The number of White citizens of voting age increased by only 470,000. But, the new district Plan created a net of three additional districts in which Whites are a majority of the eligible electorate and only one additional district in which Hispanics are a majority of the eligible electorate. See B.1 and B.2, pages 19-24.

Fifth, Plan C185 creates minority rule in the five most populous counties in the state. The five most populous counties in the state (Harris, Dallas, Tarrant, Bexar, and Travis) contain over 11 million people, almost half the state. In 2000, whites were the plurality of the people in these five counties combined. Today, Hispanics are the plurality, and Whites are the minority. Plan C185 configures the districts in these counties in such a way that Whites increase the number of districts in these areas in which they are a majority. In the 19 districts that have a plurality or majority of persons in one of these counties, 12 are majority White districts. In Dallas and Harris Counties, Hispanics are the plurality of the population but a majority in only 1 of 12 districts.

Whites retain their majorities in these districts even though they became a minority of the population between 2000 and 2010. Plan C185 violates the most basic notion of majority rule. See Sections B.2 and B.3.2, esp. pages 24-33.

Sixth, the effect of these lines is to treat White and Minority voters differently. Eighty-eight percent of Whites end up in majority White districts. Only 40 percent of Hispanics and Blacks end up in Hispanic Majority or Black Plurality districts, respectively. This is not a natural consequence of plurality rule. Even in the Harris and Dallas counties, where Whites are the minority of the population, 90 percent of Whites end up in majority White districts. In Dallas, there are no Hispanic districts, so the plurality Hispanic population effectively has no opportunity to elect their candidates of choice, and the plurality group is completely diluted electorally. See section B.3, pages 24-29.

A. Population Size, Trends, and Characteristics

A.1. Statewide Total Population Trends

Today, no single racial or ethnic group is a majority in Texas. According to figures from the U. S. Census Bureau, 45 percent of persons in the state identify as White Non-Hispanics, 38 percent identify as Hispanics, and 12 percent identify as Black. [2]

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[2]Black may be either Hispanic or Non-Hispanic. Approximately 2 percent of Black persons in Texas (approximately 60,000 persons) identify as Hispanic and Black. This is a very small amount of overlap between the groups, so we use just the figure for Black overall. Source:

That is a marked change from 2000, when whites comprised 52 percent of the state's population, Hispanics were 32 percent, and Blacks 11 percent. The Census' counts of population overall and for each racial or ethnic group in the State are shown in Table A.1.

Prior to the drawing of new district plans, one might have expected increases in the number and share of Texas' Congressional districts that contain majorities or pluralities of Hispanics, and declines in the share of districts that have majorities or pluralities of Whites. The total population of the State of Texas increased by 4.3 million people from 2000 to 2010. White non-Hispanics, the largest racial or ethnic group, grew by only 457,000 people from 2000 to 2010. This is the smallest growth of all three major groups and it is far less than the 698,488 persons required for an additional district. The number of Blacks, the smallest of the three major racial or ethnic groups, increased 526,000, a 23 percent rate of growth since 2000. The number of Hispanics in the state grew from 6.7 million people to 9.5 million people, a 42 percent increase in this group's population and an increase that accounts for the large majority of the state's growth. Indeed, if Hispanics had grown at the same rate as White Non-Hispanics (4.1 percent growth over the entire decade) the state would have lost seats in the Congress, rather than gained them, because the nation's population grew by 9.7 percent over the decade.

A.2. Citizenship and the Eligible Electorate

U. S. Bureau of the Census, http://quickfacts.census.gov/qfd/states/48000.html

These population figures are tempered somewhat by the lower citizenship rates of Hispanics compared with Whites. It is sometimes argued that the Hispanic share of the eligible electorate is sufficiently low that it is impossible to increase the number of districts where minorities have a reasonable opportunity to elect their candidates of choice. But even by that metric, Hispanics' presence in the electorate grew substantially more than Whites. Hispanic citizens of voting age, the best gauge of the eligible electorate, increased by 1.1 million persons from 2000 to 2010. This increase represents approximately half of the total increase in eligible voters in the state. White citizens of voting age, on the other hand, increased only 470,000 persons over the same time span, and Black citizens of voting age increased by nearly as much. The additional White citizens of voting age are less than one-fifth of the total increase in the eligible electorate statewide from 2000 to 2010. Hispanics increased their share of the Citizen Voting Age Population, and Whites' share of the eligible electorate shrank between 2000 and 2010. The problem is that Whites gain three additional seats, Blacks none, and Hispanics only one.

A.2.1 Measurement of CVAP

Before assessing the Hispanic, Black, and White shares of the eligible electorate, an aside about measurement is in order. Prior Court decisions use the Citizen Voting Age Population (CVAP) to gauge the number of eligible voters overall and in each group. The Census Bureau measures Citizen Voting Age Population using a separate survey from the Census Enumeration of total persons and voting age

persons. Between 2000 and 2010 the Census Bureau changed its methodology for conducting this survey. In 2000 and early redistricting cycles, the Bureau conducted a large survey, called the Long Form, at the same time as the decennial enumeration to measure citizenship, education, income, and other population characteristics. In 2005, the Bureau switched to a smaller annual survey of 3 million persons, called the American Community Survey (or ACS). The annual ACS does not have sufficient precision to measure population characteristics at the level of Census Blocks, which are the building blocks for Congressional and legislative districts. To gain sufficient precision, the Bureau constructs and releases a 5-year average of the annual ACS, and the most recent such data available are the 2005-2009 ACS average.

There is a problem using the 2005-2009 ACS. The population estimates generated by that study systematically fall short of the population counts from the Census Enumeration. The 2010 Census Enumeration count of the population of the State of Texas is 25.1 million persons. The 2005-2009 ACS estimate of the population of the State of Texas is 23.8 million persons, 1.3 million persons too few. The ACS understates the Voting Age Population by 1.1 million persons. And most alarmingly, the discrepancy between the ACS population estimates and the Census Enumeration counts varies by population groups. Nearly all of the error in the population and voting age population is in the Hispanic population figures.

A.2.2 Projected 2010 CVAP

The Appendix to this report discusses in greater length the reasons why the 2005-2009 ACS average under estimates the 2010 population, and how to correct the problem. Simply put, the time frames of the studies differ. The mid-point of the 2005-2009 ACS is 2007, and the degree of understatement is exactly what one would expect from a simply linear trend in the population from 2000 to 2010. The 5-year ACS average looks like the population circa 2007, not 2010. There is a simple correction for this problem, discussed in the Appendix. The simple idea is to estimate the percent of each population group (White, Hispanic, Black) that are Citizens of Voting Age using the ACS, and then multiply that times the number of persons in each group according to the Census Enumeration. That adjustment predicts accurately the voting age populations for each group for 2010. Here I apply that correction to the CVAP to make the best projection of the CVAP in 2010. Without doing that the CVAP data are not consistent with the Enumeration of total persons.

One may then calculate the population for each group's CVAP as their total population in the enumeration times the appropriate percentage of a group that are citizens of voting age. According to the ACS figures, 77.0 percent of Whites are citizens of voting age, 68.9 percent of Blacks are citizens of voting age, and 42.9 percent of Hispanics are citizens of voting age. Those percentages appear constant from 2005 to 2009. That calculation implies a total CVAP for the state of 15,725,999, which is 829,604 more persons that the 2005-2009 ACS reports. See Table A.2.

The calculations reveal that the 2005-2009 ACS slightly over estimates the White 2010 (projected) CVAP, and substantially underestimates the Black and Hispanic CVAP. Rescaling the 2005-2009 ACS to be in line with the population counts from the Enumeration implies that there are 8,774,942 White citizens of voting age; 1,997,202 Black citizens of voting age; and 4,063,891 Hispanic citizens of voting age. The figure for whites is almost 18,000 persons less than the ACS estimate of 8,793,200. The figure for Blacks is 132,000 (or about 8%) above the ACS estimate of 1,864,530. And, the figure for Hispanics is 390,000 (10%) above the ACS estimate of 3,674,800.

The American Community Survey estimates matter to the assessment of the racial composition of districts and the electoral performance of districts because Citizen Voting Age Population is a critical component in such analyses. It is also essential to understand that the Hispanic population was the fastest growing segment not only of all persons in the state but of the eligible electorate over the past decade.

A.3. Hispanic Growth

The Census Enumeration and the ACS show the growing importance of Hispanics in the total population and the eligible electorate in Texas. The number of Hispanic adult citizens—those eligible to vote—increased by 1.1 million persons over the past decade. In the 2000 Census, there were 2,973,000 Hispanic adult citizens in the State; by 2010, I project, there were 4,063,000. By comparison, the

number of White Non-Hispanic adult citizens increased by just 470,000. In other words, from 2000 to 2010, the number of additional Hispanics who are eligible to vote is the equivalent of over one and a half Congressional districts, while the number of additional Whites who are eligible to vote equaled slightly over one half of one Congressional District. These figures are shown in Table A.2.

Hispanics' share of the eligible electorate rose, while White Non-Hispanics' share decreased substantially. White Non-Hispanics declined from 62.5 percent in 2000 to 55.8 percent in 2010. Hispanics, on the other hand, rose from 22.3 percent of the Citizen Voting Age Population in 2000 to 25.8 percent of the Citizen Voting Age Population in 2010. That trend will continue.

The Citizen Voting Age Population is driven by citizenship rates and by age distributions. There is a significant discrepancy between Whites and Hispanics in the percent of those populations who are Citizens of Voting Age: 77 percent of Whites in Texas are adult citizens; 43 percent of Hispanics are. Half of that discrepancy arises from the very large fraction of Texas' Hispanic citizens who are not yet of age to vote. Seventy-eight percent of White Citizens are of Voting Age in Texas. Only 57 percent of Hispanic Citizens are adults. In other words, there are 2.8 million Hispanic citizens under 18 years of age in Texas, and over the coming decade half of those people will become adults. That fact alone will increase the share of the eligible electorate who are Hispanic in the State of Texas over the course of the coming decade. The districts proposed in Plan C185 will be in place from 2012 to 2020, and they will dramatically affect the ability of the rising Hispanic

voters to elect their candidates of choice.

B. Representation of Racial Groups Under Plans C100 and C185

Multiple metrics and criteria are used to determine whether there has been retrogression. The two metrics examined here are (1) the racial composition of districts and (2) the electoral performance of districts. Statistics on racial composition of districts are used to ascertain the number of districts in which minorities comprise a majority of the population or of the eligible electorate. This may be interesting in its own right, but it is usually introduced as evidence of the latter metric. Electoral performance statistics, including past vote, turnout, and racial composition of eligible voters, are used to assess whether and where Hispanics and Blacks have opportunities to elect their candidates of choice. I examine racial composition of districts here, and turn to electoral performance in the next section.

I reach three overarching conclusions about the racial composition of districts.

First, all of the White majority districts under Plan C100 remain White majority districts under Plan C185, but Plan C185 dismantles one of the existing eight Hispanic districts, Congressional District 27. Plan C185 moves almost 300,000 Hispanics in Nueces and San Patricio Counties from old CD 27, which was majority Hispanic, into new CD 27, which is majority White. This sizable Hispanic population no longer has a meaningful opportunity to elect their candidates of choice. As discussed in Section D, this change has far reaching

effects on districts from El Paso to Houston.

Second, the substantial gains in population by Hispanics and Blacks have not translated into increases in the share of seats in which minorities are a majority or plurality. The number of Hispanics increased by 2.8 million persons from 2000 to 2010 - the equivalent to four entire Congressional Districts. The number of Blacks increased by approximately 500,000 persons. The number of White Non-Hispanics increased by about 500,000 persons, slightly more than one half of one Congressional District. Plan C185 creates a net of one additional majority Hispanic district; it creates no additional Black majority or plurality districts; it creates three additional majority White districts.

Third, in the largest urban areas in the State of Texas, district lines are drawn so that the White minority dominates the majority of districts. In the most populous counties, Whites were the plurality of the population in 2000. Today, Whites are the minority and Hispanics are the plurality. Despite this shift, the minority White population retains its status as the majority of most of the districts; indeed, two additional White majority districts are created in these areas. Hispanics and Blacks, however, gain no seats in the most populous counties even though they account for nearly all of the population growth. In Dallas and Harris, the problem is particularly acute. There Whites declined in absolute numbers, but gained seats. Hispanics are the pluralities in these counties, but Hispanics are majorities in no Dallas districts and just one Harris district, while the minority White population has the majority in 8 of the 12 Dallas and Harris Districts.

B.1. Classification of Majority Minority and White Districts in Plans C100 and C185

The Texas Legislative Council provides Census data that can be mapped into each plan and used to calculate the racial and ethnic group composition of the districts. For each district in Plans C100 and C185, I determined which racial or ethnic group had a majority and a plurality of the Total Population or of the Voting Age Population. A plurality means that the group has the largest share of the relevant population of all racial or ethnic groups.

Table B.1 presents counts of the number of districts under the existing plan (C100) and the new plan (C185) that are Majority or Plurality White Non-Hispanic, Hispanic, or Black. The Census enumeration offers two ways to count population of districts, total number of persons and voting age persons. Total population is relevant because districts represent persons, and the Voting Age Population provides the best available gauge of the eligible electorate using the Enumeration. Additionally, the table presents the classification of districts based on the Citizen Voting Age Population using the 2005-2009 ACS average.[3]

It is also possible to classify districts based on registration and turnout. The redistricting process itself can affect turnout and registration, as recent research on the mobilizing effect of Majority-Minority districts suggests.[4] As discussed in the section on

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[3] Using the projection of the 2005-2009 ACS to 2010 does not change the classification of any of the districts as majority White, Hispanic or Black CVAP or plurality Black CVAP.

[4] M. Barretto, Gary Segura, and N. Woods, "The Mobilizing Effect of Majority Minority Districts on Latino

Sources of Information in this report, I have concerns about data quality in the SSVR reports. Hence, I focus on the classification of districts according to Census figures on racial composition of total, voting age, and citizen voting age populations.

B.2. Number of Majority Minority and Majority White Districts

Plan C185 creates disproportionate numbers of districts in which Whites comprise the majority. White Non-Hispanics are a plurality of the population (45.3 percent), and Hispanics and Blacks combined account for almost half of the state's population (49.4 percent). Yet, White Non-Hispanics are an outright majority of the population of 20 of Texas' 36 Congressional Districts under Plan C185, and a plurality of all persons in three more. Hispanics are a majority of total population in 8 districts and a plurality in three others, while Blacks are a plurality of all persons in 2 districts. In other words, although Hispanics and Blacks combined out number Whites, Whites are the majority or plurality of the total population in 64 percent of Texas' Congressional Districts.

The opportunity for whites to elect a majority of the Congressional delegation is magnified further upon considering the voting age population. White Non-Hispanics comprise 49.6 percent of persons over 18 years old in the State of Texas, and they are a majority or plurality of the VAP in 69.4 percent of U.

Turnout," American Political Science Review 98 (2004) 65-75.

S. House seats under Plan C185. By comparison, Hispanics are 33.6 percent of the voting age population, but they are a majority of the VAP in only 22.2 percent of seats. Blacks comprise 12.0 percent of the voting age population. They have majorities of the VAP in no seats and are pluralities of the voting age population in 8.3 percent of seats. Blacks and Hispanics, then, are 45.8 percent of the Voting Age Population, but majorities or pluralities in just 30.5 percent of the seats.

Using the eligible electorate as the standard changes the classification of several districts. Three Congressional Districts in which Whites are a plurality of the population are, in fact, districts where they are the majority of the eligible electorate. Three districts also appear to be Hispanic districts using total population, but they are not majority Hispanic in terms of VAP or CVAP. Two are in fact White majority districts (6 and 27) and one is Black Plurality (9).

Plan C185 also does not reflect the growing presence of Hispanics in the eligible electorate measured using CVAP. Nor does it reflect the shrinking presence of White Non-Hispanics among eligible voters. In 2000, Hispanics were 22.3 percent of the Citizen Voting Age Population, and under plan C100, Hispanics are a majority of adult citizens in 21.9 percent of districts. By 2010, Hispanics had increased to 25.8 percent of the CVAP, but plan C185 keeps their share of seats constant at 22.2 percent.

The number of districts in which White Non-Hispanics comprise the majority of the eligible electorate increased, even though White Non-Hispanics decreased as a share of the eligible

electorate. In 2000, White Non-Hispanics were 62.5 percent of adult citizens in the State of Texas. The 2005-2009 ACS put their share of the CVAP at 59.0 percent, and the projection of the ACS to 2010 suggests that White Non-Hispanics are 55.8 percent of the eligible electorate — a 7 percentage point drop since 2000. Even still that group gained three districts in which it comprises a majority of the eligible electorate. The number of districts in which White Non-Hispanics are a majority of the CVAP increased from 22 to 25, and that increase kept the share of districts in which they are a majority at 69 percent.

Comparison of Blacks with White Non-Hispanics is similarly revealing. Blacks and White Non-Hispanics gained approximately 500,000 persons each. Blacks comprise 3 million people in the state and roughly 2.5 million people of Voting Age Population. Each group also saw similar increases in the number of eligible voters. Since each group accounts for less than one district, it makes sense that the group with more geographically concentrated growth would stand a better chance of gaining seats. Black population growth is concentrated in 3 counties: 60 percent of the Black population growth occurred in Dallas, Harris, and Tarrant Counties. White population growth was distributed across the state, and their populations declined in Harris and Dallas Counties. In spite of these factors, Plan C185 added 3 additional White districts and no additional Black districts. Plans C100 and C185 both had 1 majority Black CVAP district (CD 30) and 2 plurality Black CVAP districts (CDs 9 and 18). Plan C100 had 22 majority White CVAP districts, and Plan C185 has 25 majority

White CVAP districts. It is somewhat surprising that Whites gain three seats and Hispanics 1 seat even though their population growth was much smaller than Hispanics, and it is surprising that Blacks gain no seats while Whites gain 3 seats because Blacks gained at least as much population and their population growth was much more highly concentrated geographically.

The five most populous counties account for 11 million people, almost half of the population of the state of Texas. Hispanics are the plurality of the population of these 5 counties combined. Of the 19 Congressional Districts that contain a majority or plurality of these counties' populations, just 4 have majority or plurality Hispanic populations. Twelve of these districts are majority White Non-Hispanic. Three are majority or plurality Black. Even though Whites comprise the second largest racial or ethnic group in the five largest counties, they have majorities or pluralities in three times as many seats as the largest group, Hispanics.

The Census Bureau projects that by 2020 Hispanics will be a plurality of all persons in Texas. The trends in citizenship suggest further that White Non-Hispanics will not be a majority of the eligible electorate by the end of the coming decade. Yet the districts set in place in Plan C185 create solid majorities of White Non-Hispanics in two out of every three Congressional Districts. This will make it exceedingly difficult for Hispanic voters to increase their ability to elect candidates to Congress over the coming decade, a decade in which that group will see its numbers in the electorate continue to grow overall and relative to White Non-Hispanics.

B.3. Stranded Voters

B.3.1 Statewide

Texas' new Congressional Districts treat minority and White voters quite differently. The most dramatic evidence is the incidence of minority voters in White districts and the incidence of White voters in minority districts. Table B.2 shows the numbers of Whites, Hispanics, and Blacks of voting age in districts where a majority or plurality of the eligible electorate are White, Hispanic, or Black. The striking fact born out in the table is that White Non-Hispanics are overwhelmingly represented by Congressional Districts in which the majority are White Non-Hispanics, while a minority of the Hispanic and Black population lives in districts that are Majority Hispanic or Majority Black.

First, consider the situation of Whites. Of the 9.1 million White non-Hispanics of voting age in Texas, 8 million live in White Majority districts and 1.1 million live in districts in which minorities are the majority or plurality of the eligible electorate. In other words, 88 percent of White adults live in districts where most people are of the same racial group as they are, and just 12 percent live in districts where they are the minority.

Blacks and Hispanics, on the other hand, are disproportionately in districts where they are the minorities. Of the 6.1 million Hispanics of voting age, 2.7 million live in districts in which Hispanics are the majority and 3.4 million live in districts where they are not the majority. Of the 2.3 million Blacks of voting age, 623,195 reside in districts that are Plurality or Majority Black, while 1.6 million live in

districts where they are the minority. Blacks and Hispanics of voting age are nearly as numerous as Whites - 8.4 million versus 9.1 million. However, only 40 percent of Blacks and Hispanics live in districts where each of these groups is the majority or plurality, and 51 percent live in districts where Whites are the majority.

The stranding of minority voters becomes a problem precisely because Whites tend to vote cohesively and as a bloc opposed to Hispanic and Black voters.[5] Almost 90 percent of Whites in the State of Texas end up in districts where they are the majority and, therefore, where the large majority of Whites have the opportunity to elect candidates of their choosing. A majority of Black and Hispanic voters, however, end up in districts where Whites are the majority and, thus, where they likely will not be able to elect their candidates of choice. Plan C185 clearly treats Blacks and Hispanics differently from Whites. The difference is a stark one - just 1.1 million White voters are stranded compared with 4.2 million Black and Hispanic voters.

B.3.2. Harris and Dallas Counties

One might think that Whites enjoy an

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[5] See the ecological regression results in Table 4 in Stephen Ansolabehere, "Report on Minority and White Representation and Voting Patterns Under Congressional District Plan C185," in the case of Perez v. Perry, No. 5:11-CV-00360-OLGJES-XR (N.D. TEX.), Docket Number 123, Exhibit 1. The exception, as discussed below, is Travis County.

advantage in the creation of seats in the State simply as a function of plurality rule, with Whites being the plurality group. However, whites are also the majority in the two largest counties in the State -- Harris and Dallas Counties, where Hispanics are the plurality and Whites are the minority.

Harris County, home to Houston, TX, is the largest county in the state. Its population grew 20 percent, rising from 3.4 million persons in 2000 to 4.1 million persons in 2010. All of that population growth came from minorities. Harris' Hispanic population grew from 1.1 million to 1.7 million, an increase of 550,000 persons. Harris' Black population grew from 645,000 to 807,000, an increase of 160,000 persons, while the County's White Non-Hispanic population declined by 70,000 persons.

Whites were the plurality group in 2000. Forty-two percent of all persons in Harris County identified themselves as White Non-Hispanics in 2000; 33 percent, as Hispanic, and 19 percent as Black. Today, Hispanics are the plurality group. The county's population is 41 percent Hispanic, 33 percent White Non-Hispanic, and 19 percent Black.

Harris County has sufficient population for 6 Congressional Districts. Under Plan C185, Harris County's population was spread across 7 CDs, six of which drew a majority or plurality of their populations from Harris County. These were districts 2, 7, 9, 10, 18, 29, and 36.

The County's Hispanic population is distributed across districts in such a way that only 31 percent of Hispanics are in districts that are majority or plurality Hispanic. This is striking because Hispanics are the single largest racial or

ethnic group in the county. By comparison, over 80 percent of White Non-Hispanics in Harris County are in districts that are Majority White. Two-thirds of the Black population of Harris is in the two Black Plurality districts. The district lines in Harris County magnify White representation and shrink Hispanic representation.

Dallas County bears out similar patterns to Harris County. Dallas is the second largest county in the state with 2.4 million persons. In 2000, Whites were 44 percent of the Dallas County population; Hispanics were 30 percent; and Blacks were 12 percent. Between 2000 and 2010, the White population of Dallas County fell 200,000 persons, dropping from 983,317 to 784,693. The Hispanic population jumped 250,000 persons, rising from 662,729 to 905,940. And the Black population climbed from 462,609 to 548.141. By 2010, Hispanics accounted for 38 percent of people in Dallas County, Whites are 33 percent, and Blacks are 23 percent.

Plan C185 added a fifth Congressional District to Dallas County, even though the county's population grew at about the national average. Under Plan C100, CDs 24, 30, and 32 had a majority of their populations in Dallas County, and district 5 had a plurality of its population in the County. Under Plan C185, Dallas residents are the majority of the population in districts 6, 30, and 32, and they are the plurality of the population in districts 5 and 24.

Curiously enough, Whites, who already controlled most of the seats, gained another, even though they lost 200,000 persons. Under Plan C100, Whites held the majority in three of the four Dallas

Districts (numbers 5, 24, and 32). The reshuffling of district lines in Dallas added another White district in the area, number 6. Under Plan C185, Whites - the minority group in the county - are now the majority in four of five Dallas Districts (numbers 5, 6, 24, and 32). Blacks are a majority in CD 30. And Hispanics are the majority in no districts in Dallas County, even though they are the plurality group.

Over 90 percent of White Non-Hispanics in Dallas County live in Congressional Districts in which Whites are the majority. Compare that with 58 percent of Blacks and 0 percent of Hispanics. None of the nearly 1 million Hispanics in Dallas County are in majority Hispanic districts.

The situation in Dallas and Harris Counties runs counter to majority rule and casts doubt on the notion that the statewide patterns are a simple consequence of plurality rule. First, one might argue that the single largest group in an area will naturally have disproportionately more representation than the smaller groups. If that line of argument characterizes the districting in Texas, then the Hispanics ought to be the majority of the population in most of the Harris and Dallas districts. Dallas and Harris are the largest counties in the state, with over 6 million people combined. There are 2.5 million Hispanics in these two counties combined, and Hispanics are the single largest group in these counties, with roughly 40 percent of the combined populations. Two and a half million persons are the equivalent of the entire population of three and a half Congressional Districts. However, only 1 of the 12 Harris or Dallas Districts is a majority or plurality of Hispanic.

Second, a minority of the population ought not to have a majority of the seats—that violates majority rule.[6] White Non-Hispanics are one-third of the populations of these counties, and the second largest ethnic group. They comprise the majority or plurality of 8 of the 12 districts in these two counties. Because there is racial bloc voting in Dallas and Harris counties, the configuration of districts in these counties makes it exceedingly difficult for the large majority of Hispanics in these counties to elect the candidates of their choice.[7]

C. Electoral Performance

The Department of Justice and prior legal decisions instruct us to look not only at the racial composition of districts, but at electoral performance. In this section, I examine the composition of the eligible electorate, turnout, and past vote to establish where Hispanics and Blacks had opportunities to elect their candidates of choice under Plan C100 and under Plan C185. Comparison of electoral performance under Plans C100 and C185 shows clear evidence of retrogression statewide. It also reveals three districts of where Plan C185 eliminated minority opportunity districts: these were CD 23, CD 25, and CD 27 under Plan C100.

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[6] See for example, Robert Dahl, A Preface to Democratic Theory. New Haven, CT: Yale University Press, 1956, esp. pages 124-51.

[7] See Table 4 in Stephen Ansolabehere, op cit.

C.1. Overall

Plan C185 reduces the number of districts in which Hispanics have an opportunity to elect their preferred candidates. Under Plan C100 there were 3 Black opportunity districts and 8 Hispanic opportunity districts. These were 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, and 30. Under Plan C185 there are 3 Black opportunity districts and 7 Hispanic opportunity districts. These are 9, 15, 16, 18, 20, 28, 29, 30, 34, and 35.

Four comments are in order about the observed retrogression.

First, this degree of retrogression is particularly striking because it is in absolute numbers, not percentages. The number of districts where Hispanics or Blacks have a reasonable opportunity to elect candidates of their choosing declines from 11 to 10. That decline comes in the face of substantial growth in Hispanic and Black populations that resulted in the State of Texas being allotted 4 additional U. S. House seats. And it comes in the face of substantial growth in the number Hispanics and Blacks eligible to vote, growth in Hispanics' share of the eligible electorate, and declines in the White share of the eligible electorate from 2000 to 2010.

Second, racial composition is not determinative of opportunities to elect candidates. Not all of the districts in the above classification are majority Hispanic or majority Black. Under Plan C100, two of the three Black opportunity districts were plurality Black (numbers 9 and 18), and one of the 8 Hispanic opportunity districts (number 25) was plurality White, but where Hispanics were a large

and pivotal share of the electorate.

Third, with the exception of benchmark CD 25, all parties are in agreement about this classification of districts under Plan C100. CD 25 is what justice Kennedy termed a cross-over district in his opinion in Bartlett v. Strickland. As I will show below, CD 25 under Plan C100 regularly elected the minority preferred candidates to the U. S. House of Representatives. CD 25 was substantially reconfigured so that it will no longer function as a cross-over district. The district was dismantled in part to create a majority Hispanic district, CD 35, but that represents no net gain in districts where minority votes could elect their preferred candidates, and it did not offset losses of minority opportunity districts elsewhere.

Fourth, even setting aside CD 25, Hispanics and Blacks lost ground in the districting process. Texas gained 4 additional seats because of minority population growth but saw no gain in the number of minority opportunity districts, and the percent of districts in which such opportunities exist declined significantly. That pattern is most striking in Harris and Dallas Counties, the two most populous areas, where Whites actually declined in number and in share of the eligible electorate and they are now a minority of the population. Even still in these two counties, Whites—already the majority of most of these counties' districts—gained two additional seats.

C.2. Minority Opportunity Districts

The method for determining which districts are Hispanic or Black opportunity districts proceeds in

three steps. First, I conduct ecological regressions and homogeneous precinct analysis for all statewide (state and federal) elections in 2008 and 2010 to determine which candidate in each is the minority-preferred candidate. I also calculated the average vote of minority-preferred statewide (state and federal) candidates, as an additional measure of electoral performance. Second, I calculate the percent of the vote in each district for the minority-preferred candidate. Third, I determine, based on vote shares and based on recent U. S. House election results in the districts, in which Congressional districts minorities have at least a 50 percent chance of electing their candidates of choice.

Table C.1 summarizes the statistical analysis of the electoral performance of the 32 districts under Plan C100 and the 36 districts under Plan C185. The rows correspond to the district numbers, and the districts on the whole line up, with a few exceptions where districts were substantially restructured, as in 25 and 27. Even in these cases, the numbers denote analogous districts. The same elections are analyzed under each set of districts. The first column under each Plan is the average of the 2008 and 2010 statewide and federal elections, the second column is the 2008 Presidential Vote, and the third column is the 2010 Governor vote.

The number of White (or non-minority) districts increases under Plan C185 by 5. Under Plan C100, there were 21 districts where minority-preferred candidates do not have a significant chance of winning. These were Districts 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 21, 22, 24, 26, 31, and 32. The parties in this suit agree that these districts were not minority opportunity districts. The electoral

performance of minority-preferred candidates in these districts ranges from 22.9 percent in district 13 (2008 Presidential vote) to 46.6 percent in district 32 (2008 Presidential Vote). Under Plan C185, there are 26 districts where minority-preferred candidates do not have a significant chance of winning. These are Districts 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, and 36. The parties in this suit agree that these districts were not minority opportunity districts.

The number of Hispanic or Black opportunity districts decreases under Plan C185. Under Plan C100 the minority opportunity districts were 9, 15, 16, 18, 20, 23, 25, 27, 28, 29, and 30. The electoral vote for the minority-preferred candidate in statewide and federal elections in these districts ranges from a low of 48.7 percent in District 23 (2010 Governor) to a high of 82 percent in District 30 (2008 Presidential Vote and 2010 Governor Vote). Under Plan C185 the minority opportunity districts are 9, 15, 16, 18, 20, 28, 29, 30, 34, and 35. Districts 34 and 35 are new Hispanic majority districts, and, in these, minority-preferred candidates won 57 to 64 percent of the vote.

Minorities had the opportunity to elect candidates of their choice in the general elections in Districts 23, 25, and 27 under Plan C100. None of these are minority opportunity districts under Plan C185.

C.3. Minority Districts Lost

Districts 25 and 27 clearly switch from minority opportunity districts to White districts.

Plan C185 simply dismantled an Hispanic district and made it into a White district, both in racial composition and electoral performance. CD 27 ran from Nueces County down to Cameron County, at the southern tip of Texas. It was a majority Hispanic District under Plan C100, and it became a majority White CVAP district under Plan C185, as indicated in Table B.3. Ecological regressions reveal that the degree of Hispanic cohesion and of white cohesion are high, and whites vote as a bloc opposed to Hispanic preferred candidates in the new CD 27. The ecological regression of Vote for the Minority Preferred Candidate on White Percent of the Voting Age Population has an intercept of .728 and a slope of -.681.[8] This implies that 73 percent of Hispanics and Blacks voted for the minority preferred candidates in statewide elections in the areas encompassed in the new District 27, but only 5 percent of Whites in that area did. Racial polarization, then, is 68 percentage points.

The racialized voting in this area translates directly into election outcomes. CD 27 was 64 percent Hispanic CVAP; it is now 51 percent White CVAP. In the CD 27 defined by Plan C100, Obama won 54 percent of the vote. The minority-preferred Congressional candidate in the general election won

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[8] The dependent variable in this ecological regression is the Average Percent of Vote won by Minority Preferred candidates in Statewide elections in 2010. The regression has an R-square of .762, a Root MSE of .08505, and 314 observations (VTDs). The Standard Error on the intercept of .728 is .013 and the Standard Error on the slope of -.681 is .022.

handily in 2006 and 2008, but not in 2010. In the CD 27 defined by Plan C185, Obama won 41 percent of the vote. This is no longer a district in which minority preferred candidates have a good shot of winning the congressional seat.

Plan C185 also eliminated a minority opportunity in the Travis County area. District 25 presents a somewhat different case than District 27. Under Plan C100, District 25 drew most of its population from Travis County, and it covers seven less populous counties to the south and southeast of Travis. Under Plan C185, the district is reoriented; it takes a smaller population from Travis County and extends to the north all the way to Tarrant County.

As it was configured District 25 under Plan C100 was a minority opportunity district because of high levels of White cross-over voting. Whites were the majority of the electorate under Plan C100, but Hispanics were the decisive voting group in the elections. Ecological regressions and homogeneous precinct analyses show that Hispanics and Blacks in Travis County voted cohesively. Also, Whites in Travis County split their votes approximately in half, with half choosing the minority-preferred candidates and half choosing their opponents.[9] The voting behavior of Whites in Austin is fairly unusual within the state. All other major counties show White cohesion. Keeping the Austin vote together in CD 25

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[9] See Table 4 in Stephen Ansolabehere, "Report on Minority and White Representation and Voting Patterns Under Congressional District Plan C185," in the case of Perez v. Perry, No. 5:11-CV-00360-OLGJES-XR (N.D. TEX.), Docket Number 123, Exhibit 1.

created unique opportunities for minorities to elect their preferred candidates with the support of White voters. The minority-preferred Congressional candidate in the general elections won handily in 2006, 2008, and 2010. Obama, the minority preferred candidate for President in 2008, won 60 percent of the vote in the area defined by CD 25 under Plan C100.

Plan C185 completely restructures the district, taking out large numbers of minorities and putting in large numbers of whites from counties to the north. The voting behavior of the whites in these counties differs substantially from the voting behavior of Whites in Austin, the seat of Travis County. Unlike the White population encompassed in CD 25 under Plan C100, the White vote in the new CD 25 shows high levels of racial cohesion and polarization. Ecological regression analysis of the relationship race and vote among the Voting Tabulation Districts in the new CD 25 yields an estimate of White cohesion of .85 --- 85 percent of Whites in this new district vote for the same candidate. And that candidate is not the minority-preferred candidate. The electoral performance of the new CD 25 clearly favors the White preferred candidates in this areA. In CD 25 defined by Plan C185, Obama won 43 percent of the vote, and this is no longer a district in which minority-preferred Congressional candidates will prevail.

Finally, consider District 23. The federal courts created this district in 2006 to be a minority-performing district. This is the most recently created district in the Texas Congressional map. Immediately before that redistricting minority preferred candidates did not succeed in their

attempts to win District 23. In 2004, Bonilla, who was not preferred by a majority of Hispanics and Blacks, defeated Sullivan 69 to 30. Immediately after the 2006 redistricting of CD 23, Hispanic preferred candidates prevailed. Rodriguez, the minority-preferred candidate, beat Bonilla 54 to 46 in the 2006 Congressional elections, and Rodriguez, again minority-preferred, beat Larson 56 to 42 in the 2008 Congressional elections.

CD 23 under Plan C100 was a minority opportunity district, but it was not a sure thing. In 2010, Rodriguez was yet again the minority-preferred candidate, but he lost to Canseco, 49 percent to 44 percent. As it was configured under Plan C100, the minority-preferred candidates in statewide and federal offices won half the votes. Obama, the minority-preferred candidate in this District, won 51 percent here; Perry, who was opposed by a majority of minorities in the District, won 51 percent here. CD 23, then, was a highly competitive district, but one where minorities had a reasonable opportunity of winning, and they won the district more often than not.

Rather than shore up the minority vote in CD 23, the State weakened this district when it passed the new Congressional district map. Plan C185 lowers the electoral performance of minority-preferred candidates in the District to the point that it is likely no longer a minority opportunity seat. As displayed in Table C.1, the vote for minority preferred candidates under Plan C185 drops 3 to 4 percentage points from the electoral performance under the baseline Plan C100. That may sound like a small change, but in a competitive district such as this one, it made a huge difference. The electoral

performance of CD 23 now lies in the range 45.0 percent (2010 Governor Vote) to 47.9 percent (2008 Presidential Vote), which is below the lowest performance of any of the minority opportunity seats under Plan C100. The electoral performance of CD 23 is now clearly at the level of districts that all agree are not minority opportunity districts, such as CD 32. All parties agree that benchmark CD 32 is not a minority opportunity district, and in that district minority-preferred candidates won 46.6 percent for President 2008 and 45.2 percent for Governor in 2010. The performance of minority-preferred candidates for Governor in 2010 is lower in new CD 23 than it is in benchmark CD 32.

The courts created CD 23 just 5 years ago to be a minority opportunity district. If there were questions about CD 23 under Plan C100, they were resolved under Plan C185.

C.4. Elements of Change

The changes in the electoral performance of CD 23, 25, and 27, as well as other districts, came about by moving areas in and out of districts. In some districts, such as 25 and 27, the changes in the areas covered are dramatic. In other districts, such as 23, they are more subtle.

C.4.1. Components of Change

There are three components of change: size of the electorate, racial composition of population, and electoral performance of each areA. Table C.2 shows the Voting Age Population and Turnout of areas kept in each district (Same), removed from each district

(Out), and added to each district (In). VAP and Turnout are two measures of size of the electorate, and the ratio of Turnout to VAP reveals the rate at which people participate in an area. Table C.3 presents the racial composition of areas kept the same, moved out, and brought in each district. Table C.4 shows the electoral performance of each of the areas. Performance times size is the magnitude of change in the electoral performance of minority preferred candidates. Moving a small number of minority voters in and a small number of majority voters out may not be as consequential as moving large blocs of these voters in and out of districts.

The redistricting cycle produced considerable churning. Most districts in the state show substantial shifts in VAP and Turnout. District 31 is the only district that lost precincts, and added no precincts. Districts 1 and 16 experienced only small changes. All other districts experienced changes in population of at least 50,000 persons, and most saw changes of at least 100,000 persons. This was even true for districts that did not have populations far in excess of the required number under the 2010 apportionment.

C.4.2. Reconfigured Districts

The most dramatically changed district is 25. It kept only 126,000, lost 489,000, and added 392,000 voting age persons. See Table C.2. Only 28 percent of the voters (2008 Turnout) were in the old district. Looking at Table C.4 it becomes obvious what the redistricting process did. The small area kept in CD 25 votes 60 percent for the minority preferred candidates. Plan C185 removed a large number of

voters (roughly 225,000) who voted 60 percent for the minority preferred candidates. The Plan, then, added back into the district an almost equally large number of voters (about 200,000) who voted roughly 40 percent for the minority preferred candidates. As a result of these shifts, CD 25 moves from minority opportunity to not.

District 27 shows a variation on the same theme. As with CD 25, Plan C185 removed a large number of eligible voters who voted for the minority preferred candidates, and replaced them with an equally large number of eligible voters who voted against minority preferred candidates.

There is an additional component to the change in CD 27. The area removed had a much lower rate of turnout than the area added. In the area taken out, only 28 percent of the VAP voted in 2008. In the area added in, 48 percent of the VAP voted in 2008. The difference reflects, in part, lower citizenship rates in the area taken out. This shift means that the area added in ends up being a much larger component of the vote and of electoral performance in the district than the area taken out, even though they are about the same number of persons. Here is an example where the districting process uses the turnout to shape the political performance of the district.

District 6, in the Dallas-Fort Worth area and counties to the south, shows the opposite pattern. In this district, a large, relatively high turnout area was moved out of the district, and a somewhat smaller, relatively low turnout area was moved into the district. The area moved in was majority Hispanic; the area moved out was majority White. The area

kept the same in this district, although less populous than the area moved in, has very high turnout and votes overwhelmingly against minority preferred candidates. In short, Plan C185 appends a low turnout minority area to a high turnout, but smaller White area to form District 6. The resulting district votes somewhat more favorably to minority preferred candidates than it did before, but that came off of a low base, and the district remains one where minority preferred candidates are highly unlikely to win. This is an example of a change in district lines that results in stranding of minority voters.

District 26, also in the Dallas-Fort Worth area, reveals a somewhat different pattern. Here there is a straight-up swap of a White area in the Fort Worth area (moved out) for an Hispanic area (moved in). The White area moved out of the district voted approximately 50-50 for the minority preferred candidates and had relatively high turnout; 50 percent of the VAP voted in 2008. The Hispanic area that is added to the district has extremely low turnout, less than 30 percent of the VAP votes, but it votes overwhelmingly for the minority preferred areas. One might have created a cross-over district in this area along the lines of the old district 25. Instead, the White urban area that splits its vote is added to a White suburban area in CD 12, and the Hispanic area in east and central Fort Worth is added to the more rural Denton County to the North. Like District 6, this is an example of the stranding of minority voters. Also, Districts 6 and 26 are examples of decisions under Plan C185 to divide the Dallas-Fort Worth area in ways that ultimately preclude the creation of a minority district in these counties.

CDs 6, 25, 26, and 27 exhibit some of the patterns of large shifts in population exhibited in Plan C185. Turnout, race, and electoral performance all factored into the changes in the electoral performance in some districts, such as 25 and 27. In other cases, such as 6 and 26, these very large changes in population were used to keep the districts performing about the way they had been, and they split off significant Hispanic vote from their immediate communities, in these examples, central Fort Worth and central Dallas.

District 23 represents some of the most subtle changes in district demography. As mentioned earlier, Plan C185 shaves 3 to 4 percentage points off the electoral performance of minority preferred candidates in this district, converting the district from a competitive seat where minority-preferred more often than not won to a district where minorities likely will not elect their preferred candidates.

The change in district 23 is driven by turnout of the areas kept, added, and removed, and to some extent by the racial composition as well. The area kept by the redistricting plan has the highest percent White (34 percent) of the three types of areas (same, out, and in), the highest turnout (42 percent), and the lowest support for minority-preferred candidates (46 to 49 percent). The area removed has the lowest percent White and the highest combined percent Hispanic and Black; it has somewhat lower turnout (39 percent), and the highest support for minority preferred candidates (58 to 60 percent). The areas added to the districts have the highest percent Hispanic (67 percent) but very low percent Black; it has the lowest turnout rate (33 percent), and

somewhat lower support for minority preferred candidates than the areas taken out (51. to 56 percent). The combination of very low turnout and lower support for minority-preferred candidates in the areas added compared with the areas subtracted, due in part to the lower percent Black, reduced the electoral performance of minority preferred candidates in CD 23 by 3 to 4 percent and rendered the district no longer a minority opportunity seat.

D. Regional Concerns

So far, I have considered individual districts and counties in isolation, but some of the specific decisions made about the inclusion of a county in one district or another have consequences far beyond that county or that district. Minority representation in the State of Texas is determined by decisions about district boundaries in three areas of the State. The first area is South and Southwest Texas. This is a large triangle that extends from the farthest western point in El Paso due east to Bexar County and San Antonio and then due South to the southern tip of Texas in Cameron County. The second area is Harris County and the City of Houston and neighboring Counties, especially Fort Bend and Galveston. The third area is Dallas-Fort Worth, which is contained in Dallas and Tarrant Counties. Even these areas can affect one another. As we will see below the decision to move Nueces County out of the South and Southwest triangle districts had far reaching effects on Harris County's districts.

D.1. The Southwest Texas Triangle

The Southwest Texas Triangle is the area enveloped by the triangle with vertices at El Paso,

San Antonio, and Cameron County. Under Plan C100 there were six districts in this area: 15, 16, 20, 23, 27, and 28. All were majority Hispanic districts and all were Hispanic opportunity districts. The 2010 Census revealed that these districts combined population was 4,697,636. This exceeded the total population for 6 districts by 506,708.

A simple adjustment to the envelope of these districts could have easily added the needed 191,780 persons so as to have sufficient population in the area for a seventh district in the triangle. Indeed, if one includes all of Bexar County, not just the part that is encompassed in CDs 20, 23, and 28, there would have been more than enough population for 7 congressional districts. Also one could have easily gained the additional population by adding in nearby counties such as Crane and Ector in Southwest Texas or Gonzales, Lavaca, and Victoria in South Central Texas.

The State argued in its filing in this case that since there was not sufficient population in the 6 Hispanic Districts in Southwest Texas that a 7th district need not be formed from their numbers. But, the path of least resistance would be to add the 191,780 persons from neighboring areas. The alterations in the existing districts reveal that would not have been difficult to do. For example Plan C185 expands District 23 northward across the Pecos River, and the new areas added to CD 23 alone accounted for an additional 224,964. Instead, the State Legislature chose to weaken CD 23. It did this by adding large numbers of voters to the district from outside the area previously enveloped by the Southwest Texas districts, and it removed key Hispanic communities from the old CD 23, such as

the southern half of Maverick County and high turnout Hispanic areas in Bexar County. All told, 375,155 people were taken out of this district. And these changes, as we have seen, markedly weakened the electoral performance of minority-preferred candidates in this district and rendered this district no longer a minority opportunity district.

More dramatic still was the dismantling of CD 27 on the Southern vertex of the triangle. Nueces County, with 340,222 persons, was one of two population centers in the old CD 27, with Cameron County being the other. The district had an excess of 43,505 people for an ideal Congressional District according to the 2010 Census. The path of least resistance would have been to take some of the population from this county to help construct a seventh district somewhere in the Rio Grande Valley. Many of the alternative plans, such as PlanC202, did just that.

Plan C185, instead, removes Nueces County from the triangle districts altogether. This county, which anchored a majority Hispanic district, is put into a district that extends north and northwest, along the Gulf Coast. The new CD 27 is now a majority White district. The 240,000 Hispanics in Nueces previously were in a district where Hispanics could elect their candidates of choice; now they are not.

To adjust for the dismantling of a Hispanic seat in CD 27, Plan C185 creates a new Hispanic district from the remnants of CD27. New CD 34 snakes from Cameron County, past Bexar County, to Caldwell County. District 34 is an Hispanic majority seat and one where minority-preferred candidates

will likely succeed. This may seem like a straight up exchange of a newly formed Hispanic seat (34) for a refurbished White seat (27). It is not.

D.2. Ripple Effects of Nueces County

The decision to wrench Nueces County out of its old district 27 had ripple effects on the construction of districts throughout southern and central Texas. It affected the configuration of districts throughout the Rio Grande Valley and the triangle and precluded the creation of a seventh district there. It affected the crafting of districts in the San Antonio and Austin area, including the construction of 35 and the destruction of 25. And it constrained the ability to craft a new Hispanic district in the Houston area, as many alternative plans were able to achieve (such as Plans C166 and C202).

The most immediate and direct effect of this decision was on the creation of a seventh Hispanic district in Southwest Texas. The populations of CDs 15, 16, 20, 23, 27, and 28 as configured under Plan C100 plus the additional 200,000 persons brought in by expanding the boundaries of 23 under Plan C185 contained more than enough population to create 7 Hispanic majority districts in this area. Moving Nueces County into a white district in the Southeast removed 340,000 persons - 206,000 whom are Hispanic - from the envelope of the Southwest Texas districts. This was too great a deficit to overcome with marginal changes in the area above CD 23. In essence, then, moving Nueces County into a White district guaranteed that there would not be a seventh Hispanic district in Southwest Texas, even though

there was sufficient population to support such a district.

A second effect of this decision was to constrain the set of possible Hispanic districts in Bexar County in particular. Given the population growth around San Antonio, this was the likely location of the seventh Hispanic district in the area. Plan C202, for example, places a new Hispanic district, numbered 33, immediately to the south of Bexar County. Plan C166 squeezes another Hispanic district in, running south and west of Bexar. Other plans provide other examples. Most put a district in this area. Plan C185 cuts into the area where most other plans would have put a seventh Hispanic district in the Valley in order to have enough population for new CD 34. It is the Hispanic district sewn together from the scraps of old district 27.

The State then proceeded to create an Hispanic district by taking Hispanic population in northern Bexar County and connecting it with Hispanic population in southern Travis County. These two clusters are connected by a strip along Interstate 35 that is three miles wide and 50 miles long. Fittingly, this is CD 35.

The creation of CD 35 took a large Hispanic population of 161,254 out of CD 25. CD 25 was a cross-over district anchored in Austin. Plan C185 took one-fourth of its population to make a majority Hispanic district, and rendered the district no longer functioning as a minority opportunity district. Again, an attempt to correct the error of moving Nueces County led to loss of yet another opportunity district.

The out waves of the ripple effect reach all the way to Harris County. If one overlays the Plan C100

and Plan C185 maps, there is an evident shift in the location of all of the districts in the Harris area to the Southwest. The reason for this is that moving Nueces into the new District 27 pulled all of the districts along the Gulf to the Southwest. Nueces County alone is half of the population of a Congressional District. Adding that population to counties to the north and northeast meant that the CD in that area (old District 14, now numbered 27) had to shift its geographic location. Next comes District 22, which is pulled out of Galveston County to the east and into Fort Bend County the West. And all of the Harris County districts are pulled further in this direction.

The shift in these districts left no flexibility for the creation of an additional Hispanic seat in Harris County. Other maps, such as 166 and 202, place a new minority opportunity district there. In stead, Plan C185 creates a new White Majority District (number 36) to the East of Harris County and it pulls CD Number 2 out of this area and entirely into Harris. In doing so, CD 2 adds a sizable minority population from Houston to White suburban communities to reconfigure this Majority White district.

The decision to take Nueces County out of 27, then, had far reaching affects on what could be accomplished elsewhere. It prevented the creation of a seventh Hispanic district in Southwest Texas. It led to the dismantling of CD 25, and it greatly constrained the ability to make a new Hispanic district in Harris County.

D.3. Dallas-Fort Worth

I have discussed the effects of districting in

Dallas earlier. The districts in Plan C185 extend arms into the county that grab urban minority populations and attach them to rural and suburban areas and counties. This is especially true for CDs 5, 6, 12, and 33. The effect of such encroachments is to break up the Hispanic and Black populations that run through the middle of these Counties horizontally, much as Mississippi's district boundaries used to divide the Black Belt Counties. Several plans offer a minority opportunity district that follows the contours of the Hispanic and Black population in Dallas and Tarrant Counties, rather than fracturing those populations and appending those segments to rural and suburban White districts.

Travis County presents a further variation on the extent of minority under representation under Plan C185. Although Travis has enough population to be a majority of 2 districts, the county is sufficiently divided that it is a majority of no districts. Travis residents are a plurality in one district, CD 25. In many ways, the division of Travis resembles Tarrant County. Most of the population of both of these counties is pulled off to other counties to accommodate districts that are based elsewhere. The one district that does remain in the county somewhat (CD 25) is White Majority, and the county is a bare majority White, but the story of Travis, like that of Tarrant, emerges upon considering the other districts that carve up the county.

Dallas County saw rapid growth in its Hispanic population and decline in its White population. Tarrant County saw its Hispanic population growth faster than its White population. Rather than create an additional Hispanic district in

APPELLEE'S BRIEF

Nos. 11-713, 11-714 and 11-715

In The
Supreme Court of the United States

RICK PERRY, in his official capacity as Governor of Texas, et al.,

Appellants,

v.

SHANNON PEREZ, et al.,

Appellees.

RICK PERRY, in his official capacity as Governor of Texas, et al.,

Appellants,

v.

WENDY DAVIS, et al.,

Appellees.

RICK PERRY, in his official capacity as Governor of Texas, et al.,

Appellants,

v.

SHANNON PEREZ, et al.,

Appellees.

On Appeal From The United States District Court For The Western District of Texas

BRIEF FOR APPELLEES TEXAS LATINO REDISTRICTING TASK FORCE, ET AL., MEXICAN AMERICAN LEGISLATIVE CAUCUS AND SHANNON PEREZ, ET AL.

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QUESTIONS PRESENTED

1. Whether, in light of Texas's failure to have precleared plans for its congressional and state legislative districts in place in time for the 2012 elections, the three-judge court properly implemented interim judicially drawn plans.

2. Whether the three-judge court's interim redistricting plans complied with the relevant legal requirements.

LIST OF PARTIES

The following appellees were plaintiffs and plaintiff-intervenors below:

Shannon Perez, Harold Dutton, Jr., Gregory Tamez, Sergio Salinas, Carmen Rodriguez, Rudolfo Ortiz, Nancy Hall, Dorothy Debose

Mexican American Legislative Caucus, Texas House of Representatives

Texas Latino Redistricting Task Force, Rudolfo Ortiz, Armando Cortez, Socorro Ramos, Gregorio Benito Palomino, Florinda Chavez, Cynthia Valadez, Cesar Eduardo Yevenes, Sergio Coronado, Gilberto Torres, Renato De Los Santos, Joe Cardenas, Alex Jimenez, Emelda Menendez, Tomacita Olivares, Jose Olivares, Alejandro Ortiz and Rebecca Ortiz

Intervenors National League of United Latin American Citizens, Gabriel Y. Rosales, Belen Robles, Ray Velarde, Johnny Villastrigo, Bertha Urteaga, Baldomero Garza, Marcelo Tafolla, Raul Villastrigo, Asenet T. Armadillo, Elvira Rios, and Patricia Mancha

Intervenors Texas Democratic Party and Boyd Richie

Intervenor Congressman Henry Cuellar

Margarita V. Quesada, Romeo Munoz, Marc Veasey, Jane Hamilton, Lyman King, John Jenkins, Kathleen Maria Shaw, Debbie Allen, Jamaal R. Smith, and Sandra Puente

Intervenors Texas NAACP, Howard Jefferson, Rev. Bill Lawson, and Juanita Wallace

LIST OF PARTIES – Continued

Intervenors Congresswoman Eddie Bernice Johnson, Congresswoman Sheila Jackson Lee, and Congressman Al Green

Eddie Rodriguez, Milton Gerard Washington, Bruce Elfant, Balakumar Pandian, Alex Serna, Sandra Serna, Betty F. Lopez, David Gonzalez, Beatrice Saloma, Lionor Sorola-Pohlman, Eliza Alvarado, Juanita Valdez-Cox, Josephine Martinez, Nina Jo Baker, City of Austin, Travis County

The following appellants were defendants below:

Rick Perry, in his official capacity as Governor of Texas

Hope Andrade, in her official capacity as Secretary of State

State of Texas

CORPORATE DISCLOSURE STATEMENT

The Mexican American Legislative Caucus, Texas House of Representatives (MALC) is an official caucus of the Texas House of Representatives. MALC is also incorporated as a non-profit, non-partisan 501c (6) corporation titled Mexican American Legislative Policy Council. MALC has no parent corporation or publicly held company owning 10% or more of the corporation's stock.

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BRIEF FOR APPELLEES TEXAS LATINO REDISTRICTING TASK FORCE, *ET AL.*, MEXICAN AMERICAN LEGISLATIVE CAUCUS AND SHANNON PEREZ, *ET AL.*

Appellees Texas Latino Redistricting Task Force, Texas Mexican American Legislative Caucus, and Shannon Perez, *et al.*, respectfully request that this Court affirm the judgment of the United States District Court for the Western District of Texas.

OPINIONS BELOW

The order of the United States District Court for the Western District of Texas imposing an interim plan for Texas's Congressional districts (Joint Appendix ("J.A.") xx) is unreported. The order of the United States District Court for the Western District of Texas imposing an interim plan for Texas's State House districts (J.A. xx) is unreported.

JURISDICTION

The three-judge district court entered its order imposing the interim State House plan on November 23, 2011 and its order imposing the interim Congressional plan on November 26, 2011. Appellants filed applications for a stay of those orders on November 28, 2011 and November 30, 2011, respectively. On December 9, 2011, this Court issued an order granting the applications for a stay, treating the applications

as jurisdictional statements, and noting probable jurisdiction. J.A. xx. The jurisdiction of this Court rests on 42 U.S.C. § 1973c(a) and 28 U.S.C. § 1253.

RELEVANT STATUTORY PROVISION

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c provides:

> **Alteration of voting qualifications; procedure and appeal; purpose or effect of diminishing the ability of citizens to elect their preferred candidates**
>
> (a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the

prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative

indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

STATEMENT OF THE CASE

Based on the 2010 Census, Texas received four additional seats in Congress. In addition, population shifts rendered the existing configuration of congressional and state legislative districts unconstitutional as a matter of one person, one vote. Texas therefore could not use its preexisting maps in the 2012 election and was required to redistrict. As a covered jurisdiction under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, Texas is required to obtain preclearance before using a new apportionment. Rather than availing itself of the opportunity provided by section 5 to obtain an administrative determination of preclearance within sixty days, the State chose to file an action for declaratory judgment in the United States District Court for the District of Columbia. That court determined, after briefing and oral argument, that the State was not entitled to summary judgment and it has set a trial date of January 17, 2012.

When it became clear that Texas would not receive preclearance by December 12, 2011 – the deadline set by Texas law for candidates to file for a place on the primary election ballot – the United States District Court for the Western District of Texas, which had before it a number of lawsuits challenging both the existing districts and the Legislature's 2011 plan, drew interim plans for the State's 36 Congressional districts and 150 State House districts.[1] Objecting to the boundaries of 8 of these 186 districts, the Governor and other state officials have appealed to this Court.

1. The 2010 Census revealed that Texas had grown dramatically over the past decade. From 2000 to 2010, the population increased by 4.29 million – more than any other state. As a result of this population growth, Texas gained 4 Congressional seats in the decennial apportionment.

Texas's growth was primarily attributable to an increase in its Latino population. Over the past decade, Latinos represented 65% of the total population growth in Texas. *See* Expert Report of Dr. Susan Gonzalez Baker at 3, *Perez v. Perry*,[2] Trial Ex. E-9, Trial Tr. 166:15-22 [hereinafter Gonzalez Baker

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[1] The Western District of Texas also drew an interim redistricting plan for the Texas Senate. Appellants did not challenge the Texas Senate plan and take no position with respect to the interim redistricting plan for the Texas Senate.

[2] All citations to *Perez v. Perry* refer to *Perez v. Perry*, No. 5:11-cv-00360 (W.D. Tex. 2011).

Report]. In 2010, persons of Hispanic or Latino origin constituted 37.6% of the population of Texas. U.S. Census QuickFacts at 994, *Perez v. Perry*, Trial Pl. Ex. 294, Trial Tr. 2019:2-6. Non-Hispanic whites (Anglos) constituted 45.3% of the population. *Id.*

Parallel demographic changes occurred in the major cities in Texas. For example, in Harris County, where the City of Houston is located, the Anglo population decreased by 82,618 and the Latino population increased by 551,789. Latinos constituted 80% of the intercensal growth of Harris County. Gonzalez Baker Report at 3-5. Latinos, African Americans and Asian Americans/Others taken together accounted for all of the total intercensal population growth in Harris County. Expert Report of Richard Murray at 27, *Perez v. Perry*, Trial Ex. E-4, Trial Tr. 166:15-22 [hereinafter Murray Report].

Similarly, in Dallas County, the Latino population increased by 243,211, the African American population increased by 73,016 and the Anglo population decreased by 198,624 people. *Id.* at 32. Thus, Latino growth compensated for the entire loss of Anglo population in Dallas County and fueled additional population growth from 2000 to 2010. Gonzalez Baker Report at 5.

Latinos now comprise 25% of the citizen voting age population of Texas. Over the past decade, Latino citizen voting age population increased by 701,812.

By contrast, Anglo citizen voting age population increased by only 487,207.[3]

Moreover, the population growth was not uniform across the state. Some jurisdictions lost population over the decade, others remained stable, and still others experienced dramatic growth. In particular, the 6 majority-Latino Congressional districts located in South and West Texas increased by enough population to constitute three-fourths of an additional congressional district within the same geographic area. In 83 of Texas's 254 counties, the substantial growth in Latino population masked the fact that the Anglo population actually *declined*.

The growth and shift in population meant that the state's existing congressional and legislative districts, which were based on 2000 census data, were now unconstitutionally malapportioned. J.A. xx.

2. The Texas House of Representatives consists of 150 members, elected from single member districts. After the 2010 census, the ideal district population is 167,637. But the existing districts come nowhere near compliance: the existing districts have a top to bottom deviation of 109.4% between the least and most populous districts and a mean deviation of 14.8%. J.A. xx.

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[3] *Compare* 2000 CVAP data from U.S. Census Bureau, Census 2000, Summary File 4, Table PCT 44, *available at* factfinder.census.gov *with* 2010 CVAP data from Department of Justice Special Tab, *available at* http://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html.

With respect to the State's Congressional districts, not only did the 2010 census render the existing 32 districts malapportioned, but it also required redistricting because the State was awarded an additional four districts. After the 2010 census, the ideal congressional district population is 698,488.

Following release of detailed census figures in February 2011, the Texas Legislature redrew the State's Congressional, State Senate, and State House districts. (The plans were embodied in separate bills. The State House plan is known colloquially as H283; the Congressional plan as C185.)

a. Under the benchmark plan in effect at the time redistricting began,[4] the Texas House of Representatives contained 33 Latino-opportunity districts.[5] The Legislature's plan for the State House: reduced the number of Latino-opportunity districts; drew oddly shaped districts in areas with concentrated Latino populations that impaired Latino voters' ability to elect the candidates of their choice; refused

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[4] The Texas House plan was the product of a plan enacted by the Texas Legislative Redistricting Board in 2001 and revised slightly following a section 5 objection interposed by the U.S. Department of Justice. *See Balderas v. Texas*, No. 6:01-cv-00158 (E.D. Tex. Nov. 28, 2001).

[5] Appellees use the term "Latino-opportunity districts" to describe districts in which Latinos constitute at least 50% of the voting age population and in which Latinos nominate and elect their preferred candidate in a majority of reaggregated, racially-contested, statewide elections from 2006 to the present.

to draw majority-Latino districts in areas with significant increases in the Latino population; and employed population deviations to the disadvantage of Latino voters.

Reduction in the number of Latino-opportunity districts. The pre-existing 2001 State House plan contained 33 Latino-opportunity districts. But despite the dramatic growth of the Latino population in Texas, the Legislature's redistricting reduced the number of Latino-opportunity districts by two.

The State eliminated House District 33 (HD 33) in Nueces County, a majority-Latino county in South Texas where Latino population growth was substantial. J.A. xx. In the benchmark plan, HD 33 is located inside the City of Corpus Christi and contains 55% Spanish-surnamed voter registration. The Legislature's plan relocates HD 33 to Rockwall and Collin counties in North Texas. In the Legislature's plan, HD 33 now contains 6.5% Spanish-surnamed voter registration and is not a Latino-opportunity district.

Disadvantageous boundaries in areas with substantial Latino populations. In addition to reducing the number of districts with majority-Latino electorates, the Legislature also drew districts in areas with substantial Latino populations in ways that minimized Latino voters' opportunity to elect their preferred candidates.

In El Paso County, which is 80% Latino, the State re-drew House District 78 (HD 78) into a bizarre shape that maximized the number of Anglo

voters in the district. J.A. xx. As a result, although the remaining House districts in El Paso County have an average of 74% Spanish-surnamed registered voters, HD 78 in the Legislature's plan contains 47% Spanish-surnamed registered voters. J.A. xx. The Legislature's reconfiguration of HD 78 splits 15 voting precincts, and does not follow geographic features. J.A. xx.

The State also reconfigured House District 117 (HD 117) in majority-Latino Bexar County, where the Latino population over the last decade increased by 250,000. J.A. xx; *see also* Gonzalez Baker Report at Table 4. The State pulled the boundaries of HD 117 out of precincts in Southwest San Antonio and extended the district into rural areas of the county, including the town of Somerset, Texas. The incumbent of HD 117, who is not the Latino-preferred candidate, testified that he advocated extending the boundaries of his district "as far north" as possible in order to gain voters that "were more Anglo and more conservative." J.A. xx. As a result, HD 117 is no longer a Latino-opportunity district. *See* Trial Pl. Ex. 201, Trial Tr. 2019:2-6.

Refusal to draw majority-Latino districts in areas with significant growth in Latino population. Along the U.S.-Mexico border, the population increase in

Cameron and Hidalgo counties between 2000 and 2010 was large enough to create an entirely new State House district. Cameron and Hidalgo counties are adjacent to each other and Latinos constitute more than 88% of the population of both counties. Gonzalez Baker Report at Table 3. Given that over 99% of the population growth over the decade was Latino, such a district would inevitably have been majority-Latino. *Id.* at Table 4. The Legislature nonetheless refused to draw such a district, ostensibly on the grounds that such a district would violate the Texas Constitution's "county line rule." The Chair of the House Redistricting Committee, Rep. Burt Solomons, went so far as to say he would elevate the "county line rule" over the Voting Rights Act. J.A. xx.

The Legislature made a similar decision with respect to Harris County (Houston). There, the minority population accounted for *more than 100%* of the overall population growth in the county, since the Anglo population decreased by 82,618 and the Latino population increased by 551,789. Nevertheless, the State created no additional majority-Latino districts when it revised the district boundaries to adjust for malapportionment. J.A. xx; *see also* Gonzalez Baker Report at 3-5.

Employment of population deviations to the disadvantage of the minority community. The State's House plan systematically overpopulates majority-Latino districts while frequently underpopulating

majority-Anglo districts. Declaration of Professor J. Morgan Kousser at 64, *Perez v. Perry*, Trial Ex. Ex-2, Trial Tr. 166:15-22 [hereinafter Kousser Report]. Of the 80 Anglo-majority districts in the Texas House plan, 34 are overpopulated and 46 are underpopulated. *Id.* By contrast, of the 37 majority-Latino districts, 22 are overpopulated and 15 are underpopulated. *Id.*; *see also* J.A. xx.

In Harris County for example, the State reduced the Latino population in an emerging majority-Latino district (HD 144) to make it safer for the Anglo incumbent, substantially underpopulating the district. At the same time, and as a result of underpopulating the Anglo district, adjacent majority-minority districts (HD 145 and 147) were substantially overpopulated. J.A. xx. Similarly, in Dallas County, the Legislature's plan overpopulated the two majority-Latino districts (Districts 103 and 104) by over 13,000 persons, while underpopulating adjacent Anglo-majority districts (Districts 108 and 115) by more than 5,000 persons.

In Hidalgo County, where incumbency protection was specifically referenced as a reason for the population variances by an incumbent who had switched parties after his election,[6] the Legislature not only severely underpopulated HD 41, but also dramatically and unnecessarily altered its constituency. J.A.

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[6] Following his re-election to the Texas House as a Democrat, Mr. Pena changed his party affiliation to Republican.

xx. At the same time, the adjacent districts, HD 39 and 40, held by incumbent Latino representatives, were also drastically altered in geography and constituency while being substantially overpopulated. Kousser Report at 92-95; J.A. xx ("Q. District 36 in Hidalgo County is over 4,000 overpopulated. District 39 in Hidalgo County is over 7,700 overpopulated. District 40 in Hidalgo County is over 5,800 overpopulated. And the district that you drew for Mr. Pena, District 41, is 7,399 underpopulated. **Was that intentional? A. Yes, sir.**") (emphasis added).

The Texas Legislature was aware of the systematic overpopulation of Latino and majority-minority districts since the Chairman of the Texas House Redistricting Committee was confronted during floor debate on the State House plan regarding that issue. Kousser Report at 66.

b. The benchmark plan for Congressional districts was in part the result of this Court's decision in *LULAC v. Perry*, 548 U.S. 399 (2006), that Texas's attempt to re-draw its Congressional map in 2003 had been tainted by racial discrimination against Latino voters. Pursuant to a court order, a three-judge court re-drew districts in South and West Texas to remedy the section 2 violation found by this Court. The resulting benchmark plan contained 7 Latino-opportunity districts.

With respect to the state's Congressional districts, the Legislature had to choose where to locate

the state's newly acquired four seats as well as redraw the existing districts to bring their population back into compliance with federal law.

Despite the fact that Latinos constituted 65% of the State's overall population growth, and that population growth was therefore the leading reason Texas gained 4 new congressional seats, the State created no new Latino-opportunity districts in its Congressional redistricting plan. Furthermore, with respect to the existing congressional districts, the Legislature redrew two majority-Latino congressional districts to reduce Latino political strength.

First, the Legislature significantly redrew the boundaries of Congressional District ("CD") 23. J.A. xx. (This was the district re-drawn in 2006 in response to this Court's holding in *LULAC v. Perry*). While he was drawing CD 23 using the Texas Legislative Council's computer software, the Legislature's chief Congressional mapper turned on the color shading for election results and Spanish-surnamed voter registration. J.A. xx. This meant that he could see the effects on election results and on Latino voter registration of every change he made the instant he made it. He moved precincts into and out of CD 23 for the purpose of strengthening the district for an incumbent who is not the Latino candidate of choice. J.A. xx. In particular, he "swapped out" precincts where Latino registered voters were more likely to turn out to vote and "swapped in" precincts with lower

Latino turnout. According to the Legislature's internal analysis, in achieving the correct population for CD 23, the Legislature's plan disproportionately reduced the Latino electorate.[7] The analysis shows that when compared to the benchmark, the Legislature's version of CD 23 reduces the average number of Anglo voters by 8,635 and reduces the average number of Latino voters by 11,820. The bottom line is that while new CD 23 may have a slightly higher Latino voter registration than its predecessor, it has fewer Latino voters and will produce dramatically lower election returns for Latino-preferred candidates. *See* J.A. xx.

The Legislature's chief mapper performed statistical analysis on its new CD 23 to verify that Latinos would be unable to oust the Anglo-preferred incumbent. The counsel to the House Speaker also used reaggregated elections to confirm that CD 23 in the Legislature's plan is projected to elect the Latino-preferred candidate in only one out of ten racially contested general elections. *See* J.A. xx. Indeed, the State's own expert testified that "I think [CD 23] is probably less likely to perform than it was, and so I certainly wouldn't and don't [and] haven't counted

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[7] Racially Polarized Voting Analysis, Estimated Votes by Race and Ethnicity in Voter Tabulation Tables (VTDs) – CD 23 – Plan C185 at 10-13, *Texas v. United States*, No. 1:11-cv-01303, Dkt. 79-19 (D.D.C. 2011).

the 23rd as an effective minority district in the newly adopted plan." J.A. xx. He further stated, "I don't count 23 as one of the seven performing districts when I evaluate C-185." J.A. xx.[8]

The State's expert further testified, with respect to the Legislature's changes to CD 23 in the first redistricting following this Court's decision in *LULAC v. Perry* that "[t]here are some obvious parallels between what happened previously and what happened this time" and "we feel like we are all having déjà vu[.]". J.A. xx.

The Legislature also drastically redrew Congressional District 27 in a way that diminished Latino voting strength. CD 27 was created by the Texas

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[8] Alluding to this Court's decision in *LULAC v. Perry*, he also testified:

> "If I [were] advising the legislature on drawing the 23rd, I would not have done what was done to the 23rd." J.A. xx. He further testified:
>
> [M]y first advice to the legislature would be just – you know, in simple – with a slight memory of history, do as little as possible to the 23rd as you can. It really has been a difficult – it was a difficult district for the Court to draw. It was a difficult district for the legislature to draw. But, basically, enough is enough, right? Don't make this hard on yourself . . . Don't mess with the 23rd. That would be my first rule for drawing the districts.

J.A. xx.

Legislature in 1981 and that district and its successors after the 1990 and 2000 censuses elected the Latino candidate of choice until 2010, when an Anglo-preferred candidate won by 775 votes. J.A. xx. In the preexisting benchmark version of the district, Nueces County is the northern anchor of CD 27 and Nueces County voters constitute the majority of registered voters in CD 27. *See* J.A. xx; RED-701 Report at 5, Ex. C13 to Trial Ex. J-62-II, *Perez v. Perry*, Trial Tr. 1746:18-1747:2; J.A. xx.

In the Legislature's new plan, the 206,293 Latino residents of Nueces County, historically accustomed to the opportunity to elect the Latino candidate of choice, are cut away and stranded in an Anglo-majority district to the north. J.A. xx; *see* Gonzalez Baker Report at 15. According to the Legislature's chief mapper, CD 27 in the benchmark and CD 27 in the Legislature's plan are "totally different districts." J.A. xx. The State's expert witness testified that CD 27 in the Legislature's plan "has flipped, in almost exactly the same way [CD] 23 was flipped previously [in the 2003 redistricting that this Court disapproved], so it is CD-27 this time that is flipped into being a majority . . . Anglo district." J.A. xx.

The State admitted that it pulled Nueces County out of its historic location in a majority-Latino South Texas Congressional district and placed it in an Anglo-majority district to improve the electoral

chances of Congressman Blake Farenthold because he would have a difficult time being reelected in the benchmark Congressional District 27. *See* J.A. xx. The State admits that CD 27 in its plan no longer offers Latinos the opportunity to elect their candidate of choice. *See* J.A. xx.

3. Appellant Governor Rick Perry signed the State House redistricting plan into law on June 17, 2011 and the Congressional plan into law on July 18, 2011. As a covered jurisdiction under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, Texas is required to obtain preclearance before using the new districts for an election cycle. In order to obtain preclearance, the State is required to show both that the districts have not been drawn for a discriminatory purpose and that they will not have a retrogressive effect on minority voting strength.

Section 5 gives covered jurisdictions the option of seeking expedited, administrative preclearance from the Attorney General of the United States. Unless the Attorney General objects within 60 days – a period that can be extended, at most, by only an additional 60 days, *see* 28 C.F.R. § 51.37 – a submitted change is deemed precleared and can go into effect. Thus, had Texas timely sought administrative preclearance, the State would have known no later than sometime in mid-fall – in time for the date on which its election

machinery begins to gear up for the 2012 elections – whether its 2011 plans passed muster.

Instead, the State chose a decidedly slower route for obtaining preclearance, filing suit for a declaratory judgment before a three-judge court in the United States District Court for the District of Columbia. That case, captioned *State of Texas v. United States*, Civil Action No. 11-1303 (RMC-TBG-BAH), is now pending before a court consisting of Circuit Judge Thomas B. Griffith and District Judges Rosemary M. Collyer and Beryl A. Howell.

The United States, the principal defendant in the D.D.C. proceeding, offered to go to trial on October 17, 2011, which could have enabled a ruling on preclearance in time for the 2012 election cycle. *See* J.A. xx. The State declined that offer, choosing instead to file a motion for summary judgment.

The State persisted in seeking summary judgment despite repeated suggestions from the court that the State could secure a faster decision by proceeding directly to trial. *See, e.g.*, J.A. xx (asking counsel for the State "whether in light of all the responses you've gotten, you would rather say, 'Okay, let's just go to trial and get this done[']instead of try summary judgment and have somebody say, 'Well, I can't really decide on this record', which I'm not anticipating, but which is, with summary judgment, always a risk.").

After full briefing with thousands of pages of exhibits and extensive oral argument on November 2, 2011, the three-judge court in the D.D.C. unanimously denied the State's motion for summary judgment. Noting that a more detailed opinion would follow, the court found that "the State of Texas used an improper standard or methodology to determine which districts afford minority voters the ability to elect their preferred candidates of choice." J.A. xx. In light of that flaw and the evidence and arguments presented by the United States and by various defendant-intervenors, the D.D.C. held that "there are material issues of fact in dispute that prevent this Court from entering declaratory judgment that the three redistricting plans meet the requirements of section 5 of the Voting Rights Act." J.A. xx. After a status conference and discussion with the parties, the D.D.C. set a trial date of January 17, 2012. As of now, Texas's plans thus have not been precleared.

4. Appellees Shannon Perez, Gregory Tamez, Sergio Salinas, Carmen Rodriguez, Rudolfo Ortiz, Nancy Hall, and Dorothy Debose (Perez Appellees) are registered voters of Texas. In May 2011, the Perez appellees filed suit in the United States District Court for the Western District of Texas. Their third amended complaint, filed after Governor Perry signed the Legislature's redistricting plans into law alleged, among other things, that the districts drawn by the

Legislature for the State House and for Congress violated section 2 of the Voting Rights Act as amended, 42 U.S.C. § 1973, and the Fourteenth Amendment both with respect to the deliberate dilution of Latino voting strength and with respect to manipulation of one person, one vote in ways that diluted Latino voting strength. The Perez appellees also sought to enjoin use of the plan pending the results of the preclearance process.

Appellee Mexican American Legislative Caucus of the Texas House of Representatives (MALC) is the nation's oldest and largest Latino legislative caucus. Many of its members are elected from, and represent, majority-Latino districts and many of its members are Latino. In May 2011, concerned by the Legislature's proposed plans, MALC filed suit in the United States District Court for the Western District of Texas. Its second amended complaint, filed after Governor Perry signed the Legislative plans into law alleged, among other things, that the plans for the State House and for Congress violated section 2 of the Voting Rights Act as amended, 42 U.S.C. § 1973 and the Fourteenth Amendment both with respect to deliberate dilution of Latino voting strength and with respect to manipulation of one person, one vote in ways that diluted Latino voting strength. It also sought to enjoin use of the plan pending the results of the preclearance process.

Appellee Texas Latino Redistricting Task Force (Task Force) is a coalition of statewide Latino organizations that formed prior to the 2011 legislative session to protect Latino electoral opportunity in the redistricting process and secure fair redistricting plans for Texas. Its membership includes, among others, the Mexican American Bar Association of Texas, Southwest Voter Registration Education Project, and Texas H.O.P.E. In June 2011, in response to the Legislature's proposed plans, the Task Force and individual Latino voters of Texas filed suit in the United States District Court for the Western District of Texas alleging that the State House and Congressional plans violated section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the Fourteenth Amendment, and seeking to have the plans enjoined under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, because they had not received preclearance.

The Perez, MALC and Task Force complaints were consolidated along with two other lawsuits (and the claims of five sets of intervenors) before a three-judge court in the United States District Court for the Western District of Texas. The lead case is captioned *Perez v. Texas*, Civil Action No. 11-CA-360-OLG-JES-XR (2011). That three-judge court consists of Circuit Judge Jerry E. Smith and District Judges Orlando L. Garcia and Xavier Rodriguez.

The parties to the Texas litigation undertook discovery on their section 2 and constitutional claims

during the summer of 2011 and the *Perez* court conducted a trial from September 6 to September 16, 2011. During that trial, the Perez, MALC, and Task Force appellees, and the other appellees, presented evidence that voting in Texas continues to be racially polarized, with Anglos and Latinos consistently preferring different candidates in primary and general elections. Appellees also showed that the Latino population had grown sufficiently to comprise the majority of the citizen voting age population in additional compact State House and Congressional districts and that Latinos still experience disparate rates of voter registration and voting as a result of the long, well-documented history of discrimination in Texas that has touched upon the rights of African Americans and Latinos to register and vote. Finally, appellees presented significant evidence of intentional racial discrimination in the Legislature's plans, including systematic population deviations in the State House plan and race-based line-drawing in both plans intended to dilute Latino voting strength.

Because the preclearance process has not yet been completed, the *Perez* court has not yet issued a decision on the merits of the appellees' section 2 and constitutional claims. Such a decision would be premature: if preclearance is ultimately denied, the 2011 plan will never go into effect and several aspects of appellees' section 2 and constitutional claims may well become moot.

In light of the undisputed fact that the 2011 plans had not been precleared, on September 29, 2011, the *Perez* court issued an order enjoining implementation of the Texas House and Congressional redistricting plans, explaining that because the plans "have not been precleared pursuant to section 5 of the Voting Rights Act, the plans may not be implemented." J.A. xx.

5. Both the three-judge court in Texas and the three-judge court in the District of Columbia were aware that if preclearance was not obtained in time – which, given the Texas law regarding candidate qualifying and primary elections, meant by mid-November 2011 – then the three-judge court in Texas would be responsible for developing an interim plan to enable the 2012 election to proceed. *See* J.A. xx ("If any one of the plans is not precleared by this Court at this stage in the proceedings, the District Court for the Western District of Texas must designate a substitute interim plan for the 2012 election cycle by the end of November."). Accordingly, in September 2011, following the close of the section 2 trial, the *Perez* court established a schedule to consider interim plans if necessary. J.A. xx. It asked the parties to provide briefing on the applicable legal standards for court-drawn maps, to submit proposed orders to modify election deadlines, to submit proposed interim redistricting plans, and to respond to

the redistricting plans proposed by other parties. J.A. xx.

Trying to avoid the need for a court-drawn plan, the *Perez* panel issued an order delaying the start of the candidate filing period from the middle of November to November 28, 2011, J.A. xx, and moving the close of the filing period as well. Based on submissions of the parties and the testimony of the Texas Secretary of State, the court concluded that "the filing period could not be delayed any further without serious disruptions to the 2012 election cycle." J.A. xx.

The three-judge court held hearings on proposed interim plans on October 31, November 3, and November 4, 2011. After drafting interim plans and circulating them for comment by the parties, the court ordered interim, judicially drawn plans for the State House and Congress into effect on November 23 and 26, 2011, respectively. J.A. xx.

a. In its interim Congressional plan, the three-judge court expressly "sought to create a plan that maintains the status quo pending [a final decision on preclearance], complies with the United States Constitution and the Voting Rights Act, and embraces neutral principles such as compactness, contiguity, respecting county and municipal boundaries, and

preserving whole VTDs [voter tabulation districts]."[9] J.A. xx.

First, the interim plan achieved population equality among the new districts, with a total overall deviation of 0.02%. J.A. xx . The court explained the *de minimis* population deviations in the plan as necessary to avoid splitting VTDs. J.A. xx ("[A]ll population shifts were done in terms of VTD's. . . . The court minimized splits to VTD's and precincts as much as possible."); *see also* J.A. xx ("[I]t became clear that cutting VTDs would create enormous administrative and financial difficulties for local governments preparing for an election at the eleventh hour.").

Second, the interim plan avoided retrogression in minority voting strength. J.A. xx (Although plans drawn by federal courts do not require preclearance, this Court has emphasized that "in fashioning the plan, the court should follow the appropriate Section 5 standards." *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981); *Abrams v. Johnson*, 521 U.S. 74, 95-96

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[9] *Vera v. Bush* cautions that preserving whole VTDs is essential to the implementation of an interim plan. 933 F. Supp. 1341, 1347 (S.D. Tex. 1996) ("Moreover, the Court's remedial plan addresses the single most troubling and realistic hurdle, the potential splitting of voter tabulation districts ('VTD's'), by avoiding that consequence in all but a small handful of voting precincts.").

(1997)). Thus, with respect to Congressional District 23 – the district that was re-drawn after this Court's decision in *LULAC v. Perry* holding that the district initially drawn by the State diluted Latino voting strength – the court based its interim district on the benchmark, which had a Hispanic citizen voting age population of 58.4%, creating a district with a Hispanic citizen voting age population of 57.3% that provided Latino voters the same ability to elect their preferred candidates as the benchmark district had given them. *Compare* J.A. xx (Interim Congressional Order – RED-206 for C220) *with* RED-206 Reports for C100, *Perez v. Perry*, Trial Pl. Ex. 239, 240, 241, Trial Tr. 2091:2-6.

Third, in developing its interim plan, the court deferred to the extent possible to the State's policies. It did so by basing the plan in significant part on the pre-existing benchmark plan from 2006, J.A. xx – an expression of the people's will. The interim plan preserves an average of 80.32% of the geography of the districts in the benchmark.[10] Similarly, the district court's interim plan respects jurisdictional lines and would not force the counties to undertake dramatic revisions to their precinct geography so close to

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[10] The congressional benchmark is a court-ordered plan created following the remand of *LULAC v. Perry*, 548 U.S. 399 (2006), that included departures from State policy only to correct the violation of section 2.

the upcoming primary election. The Texas panel's interim plan cuts only 23 county lines, 10 precincts and 3 VTDs. J.A. xx.

Fourth, with respect to the four new seats as to which no benchmark districts existed, the court's interim plan applied neutral redistricting criteria by placing the 4 new districts in areas of high growth. While doing so, it also respected county, city, and precinct boundaries to the extent possible. J.A. xx.

Finally, "[a]fter maintaining current minority districts and adding in the new districts," the district court's interim plan "inserted a number of districts with minimal change from the enacted plan where possible. These include districts 1, 3, 4, 5, 8, 11, 13, 14, and 19." J.A. xx. Thus, one-quarter of the congressional districts in the interim plan mirrored the districts the Legislature had adopted.

b. With respect to the State House of Representatives, the district court followed a similar path – adhering to principles of one person, one vote; complying with the substantive requirements of the Voting Rights Act; and respecting state policy to the extent possible.

The average population deviation in the district court's interim plan is only 1.81%. J.A. xx. The district court endeavored to avoid precinct

cuts.[11] In addition, the district court complied wherever possible with the Texas constitutional requirement to build districts out of whole counties. The district court crafted a State House plan with only 8 VTD cuts, used whole counties as building blocks wherever possible and equalized population in multi-district counties. As a result, the interim plan has an overall population deviation of 8.9%. *Id.*; *see also* J.A. xx (noting "the [Legislature's] enacted plan appears to have 412 VTD cuts[.]"). The district court's State House interim plan for Harris County features an average deviation of 1.72%; no House district has greater than 2.49% deviation. In Dallas County, the district court's interim plan features an average deviation of 0.9%.

Second, with respect to ensuring that its plan complied with the substantive requirements of the Voting Rights Act, the court began with the benchmark plan – the 2001 plan enacted by the Texas Legislative Redistricting Board and revised slightly following a section 5 objection interposed by the U.S. Department of Justice. *See Balderas v. Texas*, No. 6:01-cv-00158 (E.D. Tex. Nov. 28, 2001).

The interim plan created 35 Latino-opportunity districts. Among these were 33 districts that were successors to Latino-opportunity districts in the 2001

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[11] Census voter tabulation districts (VTDs) correspond largely to county voting precincts. *See* J.A. xx.

benchmark plan. For example, the district court relied on majority-Latino benchmark districts in El Paso, Bexar, and Nueces Counties as the basis for drawing successor districts that also provided the Latino communities in these counties with an opportunity to elect candidates of their choice. Similarly, the court maintained House District 149 in Harris County as a majority-minority district.

In drawing the interim house plan, the district court was required also to take into account uneven population growth in several areas of the state, particularly the border area and Harris and Dallas counties. Neutral districting principles in these areas of high growth, with most of the growth attributable to an increase in the Latino population, produced 2 additional majority-Latino districts.

In South Texas, the court created an additional majority-Latino House district in an area of high population growth in the Rio Grande Valley. Since 2000, Cameron and Hidalgo counties together had grown in population by the size of a State House District. The interim plan's House District 35 is located entirely within, and encompasses the population growth between, Cameron and Hidalgo counties.

In Harris County, the district court created House District 144 as a majority-Latino district that "sprang naturally from the population growth in the region." J.A. xx. In the benchmark, HD 144 contained many heavily Latino neighborhoods and had a Latino voting age population of 50.3%. Since 2000 the Latino

population had increased by over half a million in Harris County. In the interim plan, HD 144 remained in the same geographic area as its predecessor, and, reflecting some of the Latino population growth experienced by Harris County, contained a Latino voting age population of 70.6%.

In Dallas County, the panel started with the 2001 benchmark districts but ther adjusted the lines to bring the districts back into compliance with one person, one vote while ensuring that the plan was not retrogressive. *Id.* at 6-7. The district court was also required to eliminate two House districts in Dallas County, because the county grew less quickly than other parts of the state.

In Dallas County, there are now 198,624 fewer Anglos and 346,529 more non-Anglos (including 243,211 Latinos) than there were in 2000. J.A. xx; *see also* Gonzalez Baker Report at 3-5.

The district court eliminated the same two Dallas County House districts that were eliminated by the Legislature in its plan – House Districts 101 and 106. The district court's changes to the remaining districts, drawn from the benchmark plan and using traditional redistricting principles, increased the combined minority voting age population of House Districts 107 and 115 to over 50% and increased the Anglo voting age population in House Districts 102 and 113 to over 50%. J.A. xx.

c. Judge Smith dissented in part from the majority's interim plans. He agreed that the court was required to adopt interim plans. And he did not dispute the basic principles on which the majority relied. He elaborated on the reasons why the three-judge court could not adopt the State's plans wholesale, both in light of the fact that the plan had not received preclearance and in light of flaws he found in the State House plan ranging from a district that "potentially reeks of racial gerrymandering," J.A. xx, to other districts that "may raise concerns of racial or partisan gerrymandering in violation of *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004)," J.A. xx, to still other districts that created an "extreme gerrymander and palpable population disparities with neighboring districts. . . ." J.A. xx.

Nevertheless, Judge Smith disagreed with the panel's configuration of 12 of 186 districts.

6. On November 28, 2011, and November 30, 2011, appellants sought a stay of the court's orders imposing interim plans. On December 9, 2011, this Court issued an order granting the applications for a stay, treating the applications as jurisdictional statements, and noting probable jurisdiction.

SUMMARY OF ARGUMENT

For decades, the law governing a case like this has been clear. A covered jurisdiction, like Texas, must obtain preclearance of legislatively drawn redistricting plans before those plans can go into effect. Faced with a complaint alleging that the State has not obtained preclearance of its plans, a local federal district court, like the Western District of Texas in this case, has only two responsibilities: first, to enjoin use of the plans until they have been precleared and, second, if it concludes that the preclearance process will not reach a determination in time to conduct upcoming elections, to draw interim plans that comply with federal law. The three-judge court in this case properly carried out both these responsibilities.

First, the three-judge court properly enjoined Texas's 2011 legislative redistricting plans. The plain language of section 5 along with an unbroken line of this Court's precedents required such a result. Moreover, both the plain language of the Act and this Court's decisions foreclosed the three-judge court in this case both from determining whether preclearance should ultimately be granted and from adjudicating appellees' other constitutional and statutory claims before the preclearance process has been completed.

Given the State's decisions about when to enact its plans and how to pursue preclearance, there was not even a remote possibility that preclearance could

be obtained in time to use the State's new plans for the March 6, 2012 primary election. At the same time, it is impossible to continue using the existing benchmark plans, which no longer comply with the requirements of one person, one vote. Thus, under this Court's long-established precedents, the only course open to the district court here was to develop and implement its own interim plans for the 2012 election cycle.

Second, the three-judge court's interim plans comply with the requirements this Court has laid down for court-drawn plans. They satisfy one person, one vote, deviating only where necessary to enable the elections to proceed or to accommodate state policies regarding county lines. They avoid retrogression in minority voting strength in compliance with the requirements of the Voting Rights Act. Using neutral redistricting criteria, they respond appropriately to demographic changes revealed by the 2010 census, in some places creating majority-Latino districts reflective of that population growth.

The State's objections to the plans are misplaced. The State's complaint that the three-judge court did not appropriately defer to the policies embodied in the 2011 legislative plans get things exactly backwards: the plain language of section 5 and decades of this Court's decisions establish that court-drawn plans cannot adopt the deferential approach the State demands. Indeed, had the three-judge court done as the State demands, the court's own plans would themselves have required preclearance, thus defeating the

entire point of having an interim plan in place pending the results of preclearance.

The State's complaint that the interim plans are excessively race-conscious is equally meritless. The sole basis for the State's claim is the fact that the interim plans created a few additional majority-Latino districts. But the very nature of the intercensal population growth in Texas – 65 percent attributable to an increase in the Latino population – means that virtually *any* neutrally drawn plan will produce at least a few additional majority-Latino districts, as the interim plans did. Those additional districts are a measure of the plans' virtues, not flaws.

ARGUMENT

I. In Light of Texas's Failure to Obtain Timely Preclearance of its 2011 Legislative Redistricting, the Three-Judge Court was Required to Implement Judicially Drawn Interim Plans

In *Lopez v. Monterey Cnty.*, 519 U.S. 9 (1996), this Court unanimously laid out the proper role for a district court like the three-judge court in this case: "On a complaint alleging failure to preclear election changes under § 5, that court lacks authority to consider the discriminatory purpose or nature of the changes. . . . The three-judge district court may determine only whether § 5 covers a contested change,

whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate." *Id.* at 23 (citing *Perkins v. Matthews*, 400 U.S. 379, 385 (1971); *City of Lockhart v. United States*, 460 U.S. 125, 129, n. 3 (1983); *United States v. Bd. of Supervisors of Warren Cnty.*, 429 U.S. 642, 645-47 (1977) (per curiam); and *Allen v. State Bd. of Elections*, 393 U.S. 544, 558-59 (1969)). In enjoining the use of the unprecleared 2011 Legislative plans; declining to address the other constitutional and federal statutory issues raised by the plans; and deciding to impose interim, judicially crafted plans, the three-judge court followed this Court's directives in every respect.

1. The three-judge court in this case was required to enjoin use of the 2011 plans drawn by the Texas Legislature. The plain language of section 5, repeatedly interpreted by this Court, clearly forbids use of the 2011 legislative redistricting plan. In every decennial redistricting cycle begun since the Act's passage, this Court has treated redistricting as a change with respect to a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting." 42 U.S.C. § 1973c(a). *See, e.g.*, *Georgia v. United States*, 411 U.S. 526, 531-36 (1973); *McDaniel v. Sanchez*, 452 U.S. 130, 136 (1981); *Abrams v. Johnson*, 521 U.S. 74, 80 (1997); *Branch v. Smith*, 538 U.S. 254, 262 (2003).

Section 5 expressly directs that a redistricting plan cannot be implemented "unless and until" the redistricting plan is submitted to the Attorney General of

the United States and he does not "interpose[] an objection" within sixty days, or the United States District Court for the District of Columbia enters a declaratory judgment that the redistricting plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. . . ." 42 U.S.C. § 1973c; *see, e.g., Connor v. Waller*, 421 U.S. 656, 656 (1975) (per curiam) (holding, with respect to a Mississippi decennial redistricting that the enactments "are not now and will not be effective as laws until and unless cleared pursuant to § 5."). Accordingly, this Court has repeatedly, and unanimously, held that district courts confronted with suits seeking to enjoin use of unprecleared voting changes *must* enjoin their use. *See, e.g., Lopez*, 519 U.S. at 20-22; *Clark v. Roemer*, 500 U.S. 646, 652 (1991); *Connor v. Waller*, 421 U.S. at 656. Thus, the court in this case was required to enjoin use of the 2011 legislative plans.

2. The plain language of the Voting Rights Act foreclosed the three-judge court in this case from determining whether the Legislature's 2011 plans complied with section 5's substantive requirements and from determining, for the time being, whether the Legislature's plans complied with other aspects of federal law including the Fourteenth Amendment and section 2 of the Voting Rights Act.

Section 14(b) of the Voting Rights Act squarely states that "[n]o court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment pursuant to section

. . . 1973c of this title." As this Court explained in *Hathorn v. Lovorn*, 457 U.S. 255, 267 (1982), section 14(b) governs all actions seeking "approv[al of] proposed changes in voting procedure." Other courts, such as the three-judge court in this case, may decide only "the distinct question of whether a proposed change is subject to the Act." *Id.* (citing *Allen v. State Bd. of Elections*, 393 U.S. at 557-60; *McDaniel v. Sanchez*, 452 U.S. 130 (1981)). This Court reaffirmed this rule in *Lopez v. Monterey Cnty.* when it stated that "Congress chose to accomplish" its purposes in section 5 "by giving exclusive authority to pass on the discriminatory effect or purpose of an election change to the Attorney General and to the District Court for the District of Columbia." 519 U.S. at 23. Thus, the three-judge court in this case was not permitted to determine whether the 2011 plan complied with section 5's requirement that it have neither a discriminatory purpose nor a retrogressive effect. It was authorized only to determine, as it did in its September 29, 2011 order, that the plans had not been precleared and therefore had to be enjoined. J.A. xx; *see also Perkins v. Matthews*, 400 U.S. 379, 385 (1971) ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General: the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color'"); *United States v. Bd. of Supervisors of Warren Cnty.*, 429 U.S. 642, 645 (1977) (same).

Moreover, this Court has repeatedly directed courts in the position of the three-judge court here to hold off on deciding whether an unprecleared plan complies with other provisions of federal law. In *Connor v. Waller*, 421 U.S. at 656, this Court held that because the redistricting acts before the district court had not been precleared, the district court "erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination." This Court has repeatedly reaffirmed this principle. *See, e.g., McDaniel*, 452 U.S. at 146; *Wise v. Lipscomb*, 437 U.S. 535, 541-42 (1978). Most recently, in *Branch v. Smith*, Justice Kennedy explained that under the "rule prescribed by *Connor*," once a court has "found no preclearance, it [is] premature, given this statutory scheme, for the court to consider the constitutional question." 538 U.S. 254, 283 (2003). Because "[t]he proposed changes are not capable of implementation, and the constitutional objections may be resolved through the preclearance process," the court entertaining those claims should await the outcome of the section 5 proceedings. *Id.* at 283-84 (Kennedy, J., joined by Stevens, Souter, and Breyer, JJ., concurring); *see also id.* at 292 (O'Connor, J., joined by Thomas, J., concurring in part and dissenting in part) (reiterating "our decisions holding that federal courts should not rule on a constitutional challenge to a nonprecleared voting change when the change is not yet capable of implementation"). The same principle holds true for decisions regarding federal statutory claims, such as allegations of vote dilution under section 2 of the Voting Rights Act.

Finally, because the question whether the Legislature's plans should receive preclearance is pending before the United States District Court for the District of Columbia in a separate proceeding and the United States District Court for the Western District of Texas has not yet addressed the compliance of the Legislature's plans with the Fourteenth Amendment or section 2 of the Voting Rights Act, those issues are not properly before this Court either.

3. Under the circumstances of this case, the sole appropriate course for the three-judge court to take was, first, to enjoin use of the Legislature's 2011 plans unless and until they obtained preclearance and second, once it became clear that preclearance would not occur in time to allow the plans to be used in the 2012 election cycle, "to entertain a proceeding to require the conduct of the [upcoming] elections pursuant to a court-ordered reapportionment plan." *Connor v. Waller*, 421 U.S. at 657. The three-judge court properly understood its obligations. *See* J.A. xx ("Thus, the Court must draw independent redistricting plans without ruling on the merits of the pending legal challenges to the State's unprecleared plans."); *id.* at xx (7) ("Because preclearance must be determined before any other issues are ripe for this Court's consideration, the Supreme Court has forbidden remedial district courts from making any determination on the merits of the State's enacted plans until *after* preclearance." (emphasis in original) (citing *Connor v. Waller*, 421 U.S. at 656-57)).

Under Texas's existing election laws, the 2012 election cycle for congressional and state legislative offices began on November 12, 2011, when the candidate filing period for the primary election, scheduled for March 6, 2012, opened. Given that that period was set to close on December 12, 2011 and the requirement immediately following this date that the counties prepare ballots and print them for mailing to overseas military personnel by January 21, 2012, the three-judge court properly concluded that to avoid "serious disruptions to the 2012 election cycle," redistricting plans had to be in place by late November. J.A. xx.

The State itself is responsible for its inability to have precleared plans in place. First, although the State was provided with the requisite census data in February of 2011, the Legislature waited to enact its State House plan until May 2, 2011 and the Governor did not sign the bill into law until June 17, 2011. The Legislature failed to enact any congressional plans at all during the regular legislative session ending on May 30, 2011. Not until mid-summer did the Legislature enact, and the Governor sign into law, plans for the State's Congressional districts.

The State then eschewed seeking preclearance of its new plan from the Attorney General, despite the fact that section 5's administrative route "is designed to giv[e] the covered State a rapid method of rendering a new state election law enforceable." *Branch v. Smith*, 538 U.S. at 283 (quoting *Georgia v. United States*, 411 U.S. 526, 538 (1973)). Instead, it decided to

pursue a declaratory judgment action before the United States District Court for the District of Columbia. And there, despite an offer for an early trial from the United States and the three-judge court's strong suggestion that a trial would be the fastest way of obtaining an adjudication, the State persisted in prosecuting a summary judgment motion that rested on a novel legal theory to meet the State's burden of showing nonretrogression. Having deliberately chosen a path for preclearance that requires a trial in the winter of 2012, significantly after the beginning of its 2012 election cycle, the State should not now be heard to complain that its plan must be enjoined and that the three-judge court in this case must now craft a plan to allow the election to proceed.

II. The Three-Judge Court Applied the Proper Legal Standards in Developing its Interim Redistricting Plans

Over the decades, it has often become "the 'unwelcome obligation' of the federal court[s] to devise and impose a reapportionment plan" when states fail to put legal plans into place in time for upcoming elections. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (principal opinion) (quoting *Connor v. Finch*, 431 U.S. 407, 415 (1977)). As a result, this Court has laid out clear principles for federal courts to follow in crafting such plans. In this case, the three-judge court followed those principles faithfully. Indeed, the State

challenges only a handful of the district lines drawn by the three-judge court, and those challenges lack merit.

1. In cases involving covered jurisdictions whose benchmark plans cannot be used because an intervening census reveals unconstitutional levels of malapportionment, section 5 itself imposes a clear rule: the court-drawn plan cannot incorporate wholesale an unprecleared state-sponsored plan. Put simply, section 5 forecloses deference to unprecleared state policy.

First, the whole purpose of section 5 would be subverted by permitting local district courts to implement plans that have not yet been precleared. As Justice Kennedy explained for a unanimous Court in *Clark v. Roemer*, "[i]f voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes," 500 U.S. 646, 652-53 (1991) (citing *Allen v. State Bd. of Elections*, 393 U.S. 544, 572 (1969)). It would defy common sense for a local three-judge court to grant an injunction with one hand and then effectively vacate that injunction with the other.

Second, since the purpose of devising and imposing a court-ordered plan is to permit elections to go forward on schedule, adopting an unprecleared state-proposed plan would be counterproductive. As this Court reaffirmed unanimously in *Lopez v. Monterey Cnty.*, although section 5 preclearance is not required, and thus an interim plan can go into effect immediately "where a district court *independently* crafts a

remedial electoral plan," the same is not true "where a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction].'" 519 U.S. 9, 22 (1996) (emphasis added) (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981)). When the district court defers to the policy choices of a covered jurisdiction, "the preclearance requirement of the Voting Rights Act is applicable." *Lopez*, 519 U.S. at 22 (quoting *McDaniel*, 452 U.S. at 153). It would therefore be "error for the District Court to order elections under [a] system before it had been precleared by either the Attorney General or the United States District Court for the District of Columbia." *Id.*; *see also Hathorn v. Lovorn*, 457 U.S. 255, 266 (1982) (explaining that "the presence of a court decree does not exempt the contested change from § 5," which "applies to any change 'reflecting the policy choices of the elected representatives of the people,' even if a judicial decree constrains those choices." (quoting *McDaniel*, 452 U.S. at 153)).

Put simply, if the three-judge court in this case had deferred to the State to the extent the State seems to demand, then plaintiffs would have been entitled to a *second* injunction precluding the judicial plan from going into effect until *it* had been precleared. The State's position thus sets the courts on a path of infinite regress.

This Court's decision in *Upham v. Seamon*, 456 U.S. 37 (1982) (per curiam), is not to the contrary. There is a critical difference between the situation in *Upham* and the situation here. In *Upham*, Texas had

completed the preclearance process before the district court imposed the interim plan at issue. After administrative review of the State's Congressional redistricting plan, the Attorney General entered an objection "to the lines drawn for two contiguous districts in south Texas," but otherwise concluded that the State had "'satisfied its burden of demonstrating that the submitted plan is nondiscriminatory in purpose and effect' with respect to [the remaining districts]." *Id.* at 38 (quoting the Attorney General's letter). Thus, with two exceptions, the State's districts *had been precleared* and were thus presumptively valid unless and until successfully challenged as violative of some other federal or state law. It was under those circumstances – namely, "in the absence of any objection to the . . . districts by the Attorney General, and in the absence of any finding of a constitutional or statutory violation with respect to those districts – that this Court agreed that "a court must defer to the legislative judgments the [state's] plans reflect, even under circumstances in which a court order is required to effect an interim legislative apportionment plan." *Id.* at 40-41.

The case now before the Court is entirely different. Here, there has been no preclearance. Indeed, the United States District Court for the District of Columbia, before which the State's request for preclearance is now pending, denied the State's request for summary judgment on preclearance in the face of substantial arguments by the United States and defendant-intervenors that preclearance should be denied because the plans were both intentionally

discriminatory and retrogressive. *See* J.A. xx. For the time being, then, if the State were to use these districts, there *would* be a statutory violation, at the very least of section 5. Moreover, the substantial arguments that the 2011 plans violate section 2 of the Voting Rights Act and the Fourteenth Amendment have not yet been addressed here, in contrast to the situation in *Upham* where there was no then-pending claim that the parts of the plan that had been precleared violated federal law. This case would resemble *Upham* only if this Court were to have held there that the district court should have used the two districts to which the Attorney General objected, which of course it did not do. To the contrary, the district court here properly used its independent judgment in crafting an interim plan. J.A. xx ("Unlike the court in *Seamon*, [this court is] not in a position to defer blindly to the State's map, because there has been no valid determination of which districts have been precleared.").

2. Court-drawn plans must also comply with one person, one vote; satisfy the nonretrogression standard of section 5; and avoid diluting minority voting strength in violation of section 2 of the Voting Rights Act as amended.

The State has never contended that the interim plans in this case ran afoul of any of these requirements. Nor, indeed, could it.

a. The interim Congressional plan achieves near population equality, with a total overall deviation of 0.02%. J.A. xx. That tiny deviation was necessary, in an interim plan imposed "at the eleventh hour" because it was the only way to avoid splitting VTDs. J.A. xx. Similarly, the interim State House plan had a total overall deviation of 8.9% and spits only 8 VTDs. J.A. xx.

This Court has repeatedly held that judicially crafted plans "must be held to higher standards than a State's own plan" with respect to population deviations. *Chapman v. Meier*, 420 U.S. 1, 26 (1975); *see also, e.g., Connor v. Finch*, 431 U.S. 407, 417-19 (1977). Thus, the district court was not free, in crafting a court-drawn plan, to adopt the level of deviation – 9.9 percent – that the State adopted in its 2011 legislative plans. Indeed, as appellees have already explained, had the court here adopted a plan with such deviations, its plan would have constituted a "legislative" plan within the meaning of *McDaniel v. Sanchez* and would have required preclearance. The three-judge court properly avoided falling into that trap by adopting a plan that equalized population in multi-district counties and avoided excessive population deviations while also respecting precinct and county boundaries.

b. The interim plans avoided retrogression in Latino voting strength. Although court-drawn plans are not subject to the procedural requirement of

preclearance, this Court has repeatedly held that in fashioning their plans, federal courts drawing districts to govern elections in covered jurisdictions should comply with the nonretrogression principle embodied in section 5. *See, e.g.*, *Abrams v. Johnson*, 521 U.S. 74, 95-96 (1997); *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981). The interim judicial plans here comply with that principle. The district court's interim State House plan relies on the benchmark boundaries of House Districts 33 and 117 to preserve Latino voters' opportunity to elect their candidate of choice in those districts. J.A. xx. By contrast, the Legislature's State House plan eliminated HD 33 entirely and purposefully reconfigured the boundaries of HD 117 to seek out Anglo voters to protect an incumbent who is not the Latino-preferred candidate. In the interim Congressional plan, the district court followed the benchmark configurations of Congressional Districts 23 and 27 in order to preserve Latino voters' ability to elect their preferred candidates in those districts. J.A. xx.

c. The interim plans created additional Latino-opportunity Congressional and State House districts in compliance with section 2 of the Voting Rights Act as amended, 42 U.S.C. § 1973. In each instance, the new Latino-opportunity districts are compact and located in geographic areas of high population growth that already contain majority-Latino populations. J.A. xx. The district court's interim State House plan locates House District 35 in Cameron and Hidalgo counties to reflect the substantial population growth,

almost all of it Latino, in the Rio Grande Valley. J.A. xx. The interim plan's HD 78, in 80% Latino El Paso County, contains a majority of Latino registered voters and also provides Latino voters an opportunity to elect their preferred candidate. J.A. xx. In Harris County, where the Latino population grew by more than half a million, the interim plan includes an HD 144 in which Latinos comprise the majority of registered voters and have the opportunity to elect their preferred candidate. J.A. xx. Similarly, the district court's interim Congressional plan follows the lead of the Legislature and places one of Texas's new Congressional districts in South-Central Texas to alleviate the overpopulation of all six existing majority-Latino Congressional districts in this region and to provide Latino voters a new majority-Latino district. J.A. xx.

3. In its arguments to the district court and to this Court in its stay application, the State offered substantive objections to only a few districts in the court's interim plan. The basis for one objection is a claim that these districts reflect excessive race-consciousness on the part of the three-judge court. That objection is meritless.

Put simply, the State seems to suggest that every creation of a majority-non-Anglo district by a court crafting an interim plan is somehow suspect. That cannot be the law. To be sure, a court crafting an interim plan – like legislatures themselves – will normally be "*aware* of race when it draws district

lines." *Shaw v. Reno*, 509 U.S. 630, 646 (1993). But as long as the districts it draws comply with traditional districting principles such as equal population, compactness, contiguity, respect for subdivision boundaries and other preexisting lines, and with the dictates of the Voting Rights Act, the demographic composition of those districts should occasion no concern. In this case, the substantial intercensal growth in Latino population made it natural that a neutral, judicially crafted interim plan would contain at least a few new Latino districts. Indeed, given that 65% of the State's overall population growth is attributable to increases in the Latino population and that in some of the fastest growing regions in the State the population is overwhelmingly Latino, it would have been suspicious had the court's plan *not* resulted in the creation of some such districts.

In fact, as a result of this dramatic growth, to avoid developing districts with significant minority population concentrations would have required unnatural and suspicious district boundaries, like the ones found throughout both the State's Congressional plan and the Texas House plan. For example, the State's Congressional lines in Tarrant County and Dallas County demonstrate the contortions the State had to employ to avoid the natural consequences of the dramatic population growth within the Latino community of Texas. *See* J.A. xx. The record in the district court showed that the odd configuration of these districts involved an intentional attempt to

capture Latino and African American population and remove it into majority-Anglo districts. Kousser Report at 120-27.

Put simply, the question before this Court is not whether the Legislature's 2011 plans comply with federal law. One critical aspect of that question is now before the United States District Court for the District of Columbia in a separate lawsuit, and is therefore not properly presented by the case now before this Court. The remaining aspects of that question have not yet been adjudicated by the trial court and are therefore not properly before this Court in this case at this time. Nor is the question before this Court whether the State's 2011 plans do a better job of achieving the State's political policies than does the interim plan. An unbroken line of this Court's decisions precluded the three-judge court from mechanically implementing those policies in light of the current status of the 2011 legislative plans. The only question now before this Court is whether the interim court-drawn plan complies with federal constitutional and statutory requirements. It does.

CONCLUSION

For the foregoing reasons, the judgments of the United States District Court for the Western District of Texas should be affirmed.

Respectfully submitted,

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APPELLEE'S BRIEF

No. 11-713, 11-714, 11-715

IN THE

Supreme Court of the United States

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.,

Appellants,

v.

SHANNON PEREZ, ET AL.,

Appellees.

v.

WENDY DAVIS, ET AL.,

Appellees.

v.

SHANNON PEREZ, ET AL.,

Appellees.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF APPELLEES' THE TEXAS STATE CONFERENCE OF NAACP BRANCHES, ET AL., AND CONGRESSPERSONS EDDIE BERNICE JOHNSON, SHEILA JACKSON-LEE, AND ALEXANDER GREEN

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QUESTIONS PRESENTED

1. Where the legislature failed to enact and obtain preclearance for redistricting plans in time for upcoming elections, did the trial court properly order the use of interim plans that preserve the status quo to the extent possible while also complying with applicable constitutional and statutory provisions in federal and state law governing redistricting?

2. Do the interim plans ordered by the court below comply with the Equal Protection Clause of the Constitution by not allowing race to predominate without a compelling interest and being narrowly tailored?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Supreme Court Rules, the Texas State Conference of NAACP Branches states that it is an affiliation of local branches of the National Association for the Advancement of Colored People, Inc. (NAACP). The NAACP is a not-for-profit corporation organized under the laws of New York and does not issue shares to the public.

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STATEMENT OF THE CASE

This case arises from challenges to the 2011 Congressional, State Senate, and State House Redistricting plans enacted by the State of Texas. Prior to the development of the court-drawn interim plans for these offices, there were no legally enforceable plans in place to govern the 2012 elections when the filing period for that election was about to open. This situation compelled the three-judge court in the Western District of Texas, empaneled in San Antonio, to draw interim plans. The fact that these plans were interim, and not remedial in nature placed the court in an even more difficult position.

In the last decade the State of Texas experienced enormous population growth, and it is undisputed that increases in minority population accounted for most of this growth. On May 2, 2011, Texas' 82nd legislature enacted House Bill 150, which established a new plan for the election of members of the Texas State House of Representatives. That bill was signed into law on June 17, 2011. JA 167. The Texas legislature enacted Senate Bill 4, a new plan for the election of the Texas delegation to the United States House of Representatives, in a special session on June 24, 2011, and the bill was signed into law on July 18, 2011. JA 134. Texas, a state with a long history of racial discrimination, is covered by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973(c), and was thus required to obtain federal approval of these redistricting plans. Rather than submitting the plans to the Department of Justice, the State filed a declaratory judgment action for preclearance of all the plans in the District Court for the District of Columbia on July 19, 2011, over two and a half months after the legislature had passed the State House redistricting plan. JA 167.

On July 6, 2011, the San Antonio panel consolidated a number of lawsuits challenging—under Section 2 of the Voting Rights Act, on intentional discrimination grounds, and alleging violations of the one-person, one vote principle—the State House and Congressional plans enacted by the state of Texas. JA 134; JA 167. In a two-week trial beginning on September 6, 2011, the court below was presented with an abundance of evidence on these claims. Despite pushing the parties to complete trial as quickly as possible, the lower court recognized that it could not rule on the merits of these challenges until there was a ruling on preclearance from the court in the District of Columbia. JA 100.

During the course of that two-week trial, however, the three-judge lower court was presented with a plethora of evidence demonstrating that the Congressional and State House plans were drawn intentionally to discriminate against racial minority voters and violated Section 2 of the Voting Rights Act. The court heard testimony from experts who analyzed both plans and concluded that some of the ways the lines were drawn could only be explained on the basis of impermissible racial discrimination. JA 749; JA 649-50. They heard testimony from the three African-American Congresspersons about the way the state's Congressional plan undermined the ability of minority voters to have the opportunity to elect the candidates of their choice. Witnesses testified that the plan undermined that ability in such a way that the only logical conclusion was that it was done intentionally. JA 767; JA 777-79; JA 783-86. Finally, the Court heard compelling evidence documenting political cohesion amongst black and Latino voters in specific areas of the state—particularly in the larger Dallas-Fort Worth metroplex region, in the

Houston region, and in Bell County. JA 729-30; JA 737; JA 814-19; JA 822-24; JA 825-27; JA 830-31; JA 846-47; JA 853-60; JA 868-70; JA 918-20; JA 837-39; JA 844.

While the trial in Texas was proceeding on the constitutional and statutory challenges to the Congressional and State House maps, the declaratory judgment action in the D.C. District Court was also progressing. The State of Texas filed a motion for summary judgment in *Texas v. United States*, 1:11-cv-01301-RMC-TBG-BAH [Dkt. #41]. In a September 21 telephonic hearing before Judge Rosemary Collyer, District Court Judge for the District of Columbia, the State of Texas was given the option of withdrawing its motion for summary judgment and instead proceeding more rapidly to a trial. This option was relevant in light of the fact that the United States Department of Justice was opposing preclearance for the Congressional and State House plans, both on grounds of retrogressive effect and intentional discrimination. The state declined that option. JA 921-24. Instead, the parties began briefing the summary judgment issue, and the argument on the motion for summary judgment was scheduled for November 2, 2011. *Id.*

Parties in the Section 5 case submitted to the D.C. court hundreds of pages of briefing and exhibits relating to the motion for summary judgment and argued the issue extensively before that court. The results of those proceedings were a denial of the state's motion for summary judgment, on November 8, 2011, and an unequivocal ruling from the D.C. District Court that the state had "used an improper standard or methodology to determine" if its maps would be retrogressive. JA 550. Moreover, the D.C. court then instructed the San Antonio

court that it should proceed with drawing an interim plan to put in place for the 2012 elections. *Id.*

State House Redistricting Plan

Following the D.C. District Court's denial of summary judgment, the court below, on November 23, 2011, ordered the implementation of a court-drawn plan for the Texas State House of Representatives. JA 166. In the process of map-drawing, the lower used a "cautious approach," JA 101, and crafted the interim House plan that maintained the status quo, complied with the Constitution and Voting Rights Act, and embraced "neutral principles that advance the interest of the collective public good, as opposed to the interests of any political party or particular group of people." JA 170. The court embraced as many of the uncontested districts in the state's plan as possible, and the State acknowledged that 72 districts—nearly 50%—of the court's interim House plan was substantially similar to the enacted plan. JA 114. The court below noted that despite the overwhelming growth in the state's minority population, the State House plan enacted by the state legislature reduced the number of minority opportunity districts from 50 to 45. The lower court maintained those districts in the interim plan in order to avoid retrogression. Additionally, the lower court found that when neutral redistricting criteria were used, three additional minority performing districts "naturally emerged." JA 173. Even the dissenting judge on the on the lower court panel offered a proposed interim plan that created two additional minority opportunity districts. *Id.*

The court below noted that the minority-coalition State House districts that are a part of the interim plan are not

based on any merit determinations as to whether coalition districts are required under the Voting Rights Act, but rather, "naturally" resulted from restoring minority opportunity districts to their "baseline configuration" and then taking into account population shifts. JA 178. The lower court's position was that the incorporation of the state's bizarrely-shaped districts, despite alleged constitutional defects, would amount to an improper merits determination on the validity of those allegations. JA 180. The court held that it could neither adopt wholesale the challenged districts nor affirmatively reject the state's choices because either would have required prohibited interference with the D.C. District Court's sole jurisdiction to determine Section 5 compliance or a determination of the merits of the Section 2 trial, which is also prohibited prior to a Section 5 determination. JA 97.

However, the lower court's interim House map did defer to the state's policy determinations in a number of ways. For example, in Harris County, the court deferred to the state legislative decision to reduce the Harris County delegation to 24, despite the benchmark plan having 25 Harris County districts. JA 104. In the interim House plan, the court below focused on maintaining the status quo, neutrally accounted for demographic changes, and adopted unchallenged aspects of the state plan

Congressional Redistricting Plan

On November 26, 2011, the court ordered the implementation of a court-drawn Congressional plan for the state of Texas. JA 132. In order to maintain the status quo and to avoid retrogression in violation of Section 5, the lower court drew the three existing African-American

congressional opportunity districts—Congressional Districts 9, 18, and 30—in a way that maintained the cores of the districts and met the benchmark population numbers, making changes only as necessary to account for population inequality. JA 139; JA 146. As the State did in its congressional plan, the court below anchored one of the new congressional districts in Bexar County, and drew the Latino opportunity district moving northward along the I-35 corridor. JA 142. The court placed another of Texas' four new congressional districts, Congressional District 33, in the Dallas-Fort Worth metroplex (entirely contained within Tarrant County)—the same area in which the state's plan located the new Congressional District 33. In the interim plan CD 33, African Americans and Latinos comprise 60.7% of district's voting age population and 50.5% of the citizen voting age population of the district. JA 147. Additionally, the lower court noted that, where it could, it adopted a number of districts that were substantially similar to the enacted plan—nine of the thirty-six districts (25%) were practically identical to those in the state's plan. JA 147-48.

The State of Texas applied to this Court for a stay of the interlocutory order directing implementation of these plans, as well as the court-drawn plan for the Texas State Senate. JA 89. On Friday, December 9, 2011, the Supreme Court granted the applications for a stay, treated the stay applications as jurisdictional statements, and noted probable jurisdiction.

SUMMARY OF ARGUMENT

Where no newly enacted and precleared redistricting plan was available, and the prior redistricting plans were grossly malapportioned because of dramatic population

growth, the three-judge panel in the District Court for the Western District of Texas followed the proper legal standard in constructing interim redistricting plans for the Texas State House and Congressional districts, to be used in the 2012 elections. The court below preserved the cores of existing districts to the extent possible, created only *de minimis* population deviations, and was careful to comply with the requirements of the Voting Rights Act reasonably based on sound evidence already before the court.

The application of that standard also recognized the limitations placed on a district court when no Section 5 preclearance determination has been made. A preliminary injunction standard would not be appropriately applied to the plans constructed by the court below, as they were entirely interim, not remedial, in nature. Complete or extreme deference to the State's enacted plans would have, in essence, nullified Section 5. Instead, the lower court properly relied on neutral redistricting criteria in an attempt to maintain the status quo pending resolution of the Section 5 proceedings in the District Court for the District of Columbia and pending subsequent resolution of the Section 2 and Equal Protection claims brought in the Western District of Texas.

The plans crafted by the court below were not racial gerrymanders—race did not predominate over traditional redistricting criteria. And, even had race been a dominant factor, the Texas court was in possession of enough evidence and testimony to assess compliance of its interim maps with Section 2 of the Voting Rights Act, a compelling interest and, indeed, a legal requirement. Finally, even if greater deference to the state's enacted plans were required, the potential irreparable harm to

millions of minority voters caused by conducting elections under constitutionally-infirm plans that dilute minority voting strength cannot be tolerated.

ARGUMENT

I. The Trial Court Applied the Proper Standard for Interim Plans

The three-judge trial court applied the proper standard in constructing interim plans for the 2012 elections for the Texas State House of Representatives and the Texas members of the United States House of Representatives. That standard involved starting from the benchmark plans in drawing the interim plans and maintaining the status quo pending resolution of the Section 5 litigation. The standard governing the construction of interim plans requires compliance with the Constitution and Voting Rights Act and a commitment to neutral and traditional redistricting criteria, such as compactness, contiguity and respecting political subdivisions.

As an initial matter, a district court such as the one empaneled in San Antonio does not have jurisdiction to determine issues arising under Section 5 of the Voting Rights Act, including issues of retrogressive effect and discriminatory purpose. In *U.S. v. Bd. of Sup'rs of Warren County*, 429 U.S. 642 (1977), this Court held that, "[w]hat is foreclosed to such a district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General—the determination whether a covered change does or does not have the purpose or effect of denying or abridging the right to vote on account of race or color." *Id.* at 645.

Additionally, this Court has clearly held that a district court may not rule on the merits of any challenges to a redistricting plan until after a preclearance determination has been reached by the Attorney General or the D.C. District Court. *Connor v. Waller*, 421 U.S. 656, 656-67 (1975); *Clark v. Roemer*, 500 U.S. 646, 652-53 (1991). These two factors effectively rendered the lower court unable to make any determinations on the validity of the state's enacted plans. Finally, a court-drawn plan must assure the public that the court has acted fairly and did not favor a particular political party, geographic area or race: "the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner free of any taint of arbitrariness or discrimination." *Connor v. Finch*, 431 U.S. 407, 414-15 (1977).

A. The Trial Court Preserved the Status Quo, Making Adjustments Necessary to Comply with State and Federal Law

The lower court correctly outlined the appropriate standard governing the construction of an interim redistricting plan where no constitutional or statutory violations have been formally ruled upon, but where evidence relating to those claims has been squarely placed before the court. In its own words, what the court below did was seek "to create a plan that maintains the status quo pending resolution of the preclearance litigation to the extent possible, complies with the United States Constitution and the Voting Rights Act, and embraces neutral principles such as compactness, continuity, respecting county and municipal boundaries, and preserving whole VTD's. The court also sought to balance these considerations with the goals of the state political policy." JA 137-38.

The summary judgment proceedings before the three-judge court in the District of Columbia were key in informing the lower court's determination of the standard to be employed in crafting an interim plan and its analysis of the extent to which it should defer to Texas' legislatively drawn Congressional and State House plan. The D.C. District Court found that Texas applied the incorrect standard for determining whether there is retrogression. JA 136-37. Because the State was incorrectly assessing which districts in the benchmark plan provided minority voters an opportunity to elect their candidate of choice, their entire statewide analysis of retrogression is necessarily called into serious question. *Id.* Thus, despite the fact that there has yet to be a finding of a retrogressive effect or discriminatory intent, the lower court was faced with the inescapable conclusion that a retrogressive effect could be widespread across the Texas map.

The court below crafted the interim plans following the guidance issued by this Court for such situations. In *McDaniel v. Sanchez*, this Court held that, "in fashioning a plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." 452 U.S. 130, 149 (1981) (quoting S. Rep. No. 94-295 at 19, reprinted in 1975 USCCAN 774, 785) (internal quotations omitted). In addition, this Court has encouraged the use of traditional redistricting criteria, including compactness, contiguity, respect for political subdivision boundaries, maintaining the core of districts, respecting communities of interest, and separation of incumbents. *Shaw v. Reno*, 507 U.S. 630, 642, 647 (1993); *Bush v. Vera*, 517 U.S. 952, 958-65, 977 (1996).

Balancing the pendency of the Section 5 determination against the strong indication that there could be significant Section 5 problems with the map, the court below could not substantially defer to the state's entire plans. Maintaining the status quo until the statutory and constitutional violations could be determined was the only reasonable option open to the court. The interim maps produced by the lower court represent the court's "primary goal...to preserve the status quo as much as possible," as well as compliance with the United States and Texas Constitutions and the Voting Rights Act. JA 170. As one would expect, a commitment to preserving the status quo for a redistricting plan in a state that has experienced dramatic population growth will have some political consequences, but those are driven by population, not the determination of a court. The court below noted that, "[t]he dissent states that...the Court has made 'radical alterations in the Texas political landscape.' The reality is that demographics, not this Court's actions, have changed the landscape." JA 173.

Maintaining the status quo in the interim plan means maintaining the cores of pre-existing districts—a traditional and neutral redistricting criteria. This element of the status quo approach has particular significance in Texas in terms of participation by and voter education for minority citizens. Voter education, of course, includes information concerning the various districts to which voters are assigned, the candidates in those districts, changes in polling places, information regarding rides to the polls, and similar activities. Disruption of precincts invites voter confusion and frustration.

Another startlingly beneficial aspect to the status quo approach used by the lower court is that it avoids splitting, on a temporary basis, the "astronomical number" of precincts and VTDs that were split in the state's enacted House and Congressional plans. JA 116. A "VTD" is a voter tabulation district, and is the functional equivalent of a voting precinct. JA 138.

The court-crafted interim House plan contains only 19 precinct cuts, as compared with the 422 precincts cut in the state's enacted House plan. The court-drawn plan also cuts only 8 VTDs, while the state's plan cut 412. The interim Congressional plan cut only 10 precincts, while the state's Congressional plan cut 520 precincts. Similarly, the interim Congressional plan cut merely 3 VTD's, while the state's Congressional plan cut 518 VTDs. *Id.* This is no idle concern. In *Bush v. Vera*, the Supreme Court noted that the "utter disregard of...local election precincts, and voter tabulation district lines has caused a severe disruption of traditional forms of political activity and created administrative headaches for local election officials." 517 U.S. 952, 974 (1996). The trial court in that case, whose decision the Supreme Court affirmed, had noted that the "splitting of VTD's...was an electoral nightmare," that "[v]oters were thrust into new and unfamiliar precinct alignments," and that "voters were confused and frustrated." *Vera v. Richards*, 861 F. Supp. 1304, 1325, 1340 (S.D. Tex. 1994). The lower court heard evidence on such problems created by splitting precincts at trial and in the interim plan hearing. JA 102. Thus, by minimizing the number of split precincts and VTDs, the court below was following guidance from this Court on minimizing voter confusion.

Given that the lower court had to comply with all federal and state law governing redistricting, it is also worth noting that the court's plans did as well, if not better, than the state's plan in complying with the Texas Constitutional requirement to minimize county cuts. The interim House plan cut 24 county lines, the same number cut by the state's enacted plan. The interim Congressional plan contained 23 county line cuts, compared to the 33 county lines cut in the state's enacted plan. JA 116.

The lower court also had to comply with the Equal Protection Clause of the 14th Amendment by not intentionally discriminating on the basis of race in the process of crafting interim maps. In both the trial conducted in September in San Antonio, and in preclearance proceedings in the District of Columbia, challenges based on intentional racial discrimination were significant and widespread for both the State House and Congressional maps. *See, e.g.*, JA 749; JA 767; JA 777-79; JA 783-86; JA 832-34; JA 875-80; JA 885; JA 897-902; JA 94. In many of those instances, the claims centered around the fracturing of minority populations that could only be explained by impermissible intentional discrimination. In drawing the interim plans, the lower court commented that it:

> drew the districts as reasonably compact as possible, rather than fracturing them. In applying these principles, it was relatively easy to preserve the existing minority districts and avoid the challenges that had been made to the State's enacted map. In fact, it became clear that a map drawer must go out of his way to fracture some of the districts in the manner reflected in the State's enacted map.

JA 118. Thus, the court below, by not inexplicably fracturing those districts, was able to comply with its constitutional obligation not to intentionally discriminate on the basis of race.

In Texas, it historically has been all too common for the legislature to craft a racially discriminatory plan. Indeed, this Court's ruling in *LULAC v. Perry* confirmed this fact. 548 U.S. at 440 (noting that the configuration of Congressional 23 "bears the mark of intentional discrimination that could give rise to an equal protection violation.") The standard applied by the court below, including deference to the benchmark plan and a goal of maintaining the status quo, was proper, and application of that standard resulted in interim plans that are above reproach.

The status quo approach, balanced with compliance with federal and state law, is perhaps best explained with concrete examples. A prime example of the lower court acting to maintain the status quo and avoid retrogression is found in State House District 149. The state's plan dismantled Harris County District 149, which was a minority district represented by the only Asian-American member of the State House. The plaintiffs in the Section 2 case complained of this action, and the Department of Justice is actively opposing it in the D.C. District Court as retrogressive under Section 5. JA 104. Thus, in order to maintain the status quo and avoid potential retrogression, the San Antonio court maintained that district as a majority-minority district with only minor changes from its previous configuration.

B. *Upham* Deference to the Choices of the Legislature Does Not Apply Here

Much of the conflict this Court is currently being asked to resolve relates to deciding to what extent, if at all, the decision in *Upham v. Seaman*, 456 U.S. 37 (1982), applies to a court-drawn interim plan where a decision on Section 5 preclearance is still pending. The deference urged in *Upham* is not applicable in this situation. The vital difference between this case and the facts in *Upham* is that in *Upham*, the Attorney General had interposed an objection and identified the specific two districts to which he objected, thereby signifying that the rest of the plan was not in violation of Section 5, either in effect or intent. *Id.* at 38. The district court in *Upham* redrew those two districts and additionally redrew districts in Dallas County—an area in which the Attorney General had not identified Section 5 problems. Additionally, the district court in *Upham* had conducted only a hearing in the case, not a trial on Section 2 and intentional discrimination claims. *Id.*

In this instance, there has been no objection. Thus, it is impossible for the court below to defer to the parts of the state's plans that have been deemed in compliance with Section 5 of the Voting Rights Act. The lower court has heard an enormous amount of evidence of intentional discrimination in violation of the Equal Protection Clause, and about where minority populations are politically cohesive. *See also*, JA 729-30; JA 749; JA 814-19; JA 822-24; JA 825-27; JA 830-31; JA 846-47; JA 853-60; JA 868-70; JA 918-20. These procedural differences substantially distinguish *Upham*.

Moreover, the State's interpretation of how *Upham* applies to this case is untenable and in direct conflict with this Court's decision in *Lopez v. Monterrey County*, 519 U.S. 9 (1996). In *Lopez*, a three-judge district court had "authorized Monterey County to conduct judicial elections under an election plan that has not received federal approval pursuant to § 5 of the Voting Rights Act." *Id.* at 11. This Court reversed, holding that the district court had erred by implementing a plan that had not received preclearance from the Attorney General or the D.C. District Court. *Id.* at 22. There the state argued that the district court was not implementing an unprecleared plan, but rather, under its equitable remedial authority, was imposing a remedy plan—a plan that happened to be a plan proposed by the county. *Id.* This is quite similar to what Texas urges in the instant case.

In its stay application, Texas attempts to distinguish *Lopez* as different because the county withdrew its preclearance submission and made no further attempts to obtain federal approval. However, the language used by the *Lopez* Court does not turn on the fact that Monterrey County refused to acknowledge its obligation to obtain preclearance under Section 5—the Court explicitly spoke in terms of the error of a court implementing the policy choices of the county absent preclearance from the Attorney General or the D.C. District Court. The Court wrote,

> But where a court adopts a proposal "reflecting the policy choices ... of the people [in a covered jurisdiction] ... the preclearance requirement of the Voting Rights Act is applicable." The at-large, countywide system under which the

> District Court ordered the County to conduct elections undoubtedly "reflect[ed] the policy choices" of the County; it was the same system that the County had adopted in the first place. It was, therefore, error for the District Court to order elections under that system before it had been precleared by either the Attorney General or the United States District Court for the District of Columbia.

Id. at 22 (internal citations omitted). The Court clearly rejected "reflect[ing] the policy choices" of the legislative body as an option for a district court when the legislatively-enacted plan had not yet been precleared. *Id.* This is a decision that post-dates *Upham*, and the Court was unambiguous in its ruling.

Additionally, the level of deference afforded by the Court in *Upham* is not applicable or appropriate in the current situation because of the nature of the Attorney General's objections to the plan and the nature of the constitutional claims brought by plaintiffs in the San Antonio case. In *Abrams v. Johnson*, 521 U.S. 74 (1997), this Court noted that substantial deference to a state's plan in a court-drawn remedial plan is not appropriate where "the constitutional violation[] affects a large geographic area of the State" because "any remedy of necessity must affect almost every district." *Id.* at 86. Of course, because the court was drawing an interim plan, not a remedial plan, there, by definition, have been no findings of violations. But the court below had heard weeks of testimony and evidence relating to constitutional and statutory violations across the entire state of Texas, and the D.C. court held that Texas had used the wrong retrogression standard,

which would have affected districts across the state. The mere fact that Texas definitively used the wrong standard for determining retrogression would alone demand that the lower court not defer to the state's plan. Ultimately, the history of redistricting in Texas, including intentional acts of discrimination, the large number of districts being challenged, and the known fact that Texas did not properly analyze potential retrogression all give ample ground for the lower court drawing an interim plan to exercise caution in deferring to the Legislature's judgments. Thus, under *Abrams*, substantial deference would not have been appropriate under these factual circumstances.

Despite not being in a position where *Upham* deference to the state legislative plan was allowable, the court below did give "as much consideration ot the State's enacted map as possible without rubberstamping the districts that were the subject of legal challenges." JA 90. The court below certainly did not adopt of any of the maps offered by the Plaintiffs during the process of development of the interim maps. Any more deference to the state's enacted plan would have contravened this Court's ruling in *Lopez*.

C. The Trial Court Correctly Applied a *De Minimis* Population Deviation Standard

Although there are a limited number of cases dealing court-drawn interim redistricting plans, one element of jurisprudence relating to this issue is crystal clear—court-drawn state legislative plans must meet a higher standard of population equality than plans drawn by a legislature. In *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975), this Court unequivocally instructed that a court-drawn plan must "achieve the goal of population equality with

little more than *de minimis* variation," and, on this front, "must be held to higher standards than a State's own plan." Furthermore, the Court noted that any deviation from this *de minimis* population variance standard must be justified by "enunciation of historically significant state policy or unique features." *Id.* at 26.

Even the dissenting judge on the court below acknowledged that "the Legislature created substantial population disparities in Dallas and Harris Counties in a manner that may raise concerns of racial or partisan gerrymandering in violation of *Larios v. Cox*." JA 175-76. In *Larios v. Cox*, 542 U.S. 947 (2004), this Court summarily affirmed a lower court's striking down of Georgia state legislative plans on one person, one vote grounds. That decision stands for the proposition that there is no ten percent safe harbor any longer—state and local redistricting plans can be struck down even if the deviations are under ten percent, particular where impermissible intent is perceived. *Id.* at 950. One of the primary sources of difference between the interim State House plan and the enacted State House plan was the lower court's inability to tolerate deviations as high as ten percent. The State House plan enacted by the Texas legislature had a deviation of 9.92%. JA MJA 25. The interim House plan, on the other hand, has an average deviation of 1.81%, and the population variances are the result of the Court's state goal of avoiding cutting county lines, precincts and VTDs. JA 116. Thus, the kind of deference to legislatively enacted plans urged by the State of Texas is in direct contradiction to well-established guidance from this Court for court-drawn interim plans. The court below correctly drew plans with *de minimis* population variations which necessitated

different configurations from the plans enacted by the Texas legislature, particularly as seen in urban Dallas and Harris counties.

D. The Standard Articulated by the State Is a Remedial Standard, Not an Interim Standard

As mentioned above, unequivocal precedent from this Court prevented the court below from in any way ruling on the merits of the Section 5 case or the Section 2 and Equal Protection claims tried before it. Thus, the court could not do what the *Upham* court was instructed to do—correct only the statutory violations in the plan. The Department of Justice alleged that intentional discrimination infected the entire plan. JA 94. There was no mechanism by which the San Antonio court could identify violations without intruding on the jurisdiction of the D.C. Court.

Additionally, practical constraints distinguish an interim plan from a remedial plan. For an interim plan, a court must also draw a plan that actually can be implemented in the time. In *Ely v. Klahr*, 403 U.S. 108 (1971), for example, the this Court affirmed a district court's decision not to adopt the plaintiff-appellant's plan "since it was based on census tracts, rather than the existing precinct boundaries, and the necessary reconstruction of the election precincts could not be accomplished in time to serve the 1970 election, whose preliminary preparations were to begin in a few weeks." *Id.* at 111-12 (quoting the district court opinion). The court below, after hearing evidence at trial and in the interim plan hearing, was convinced that cutting VTDs would "create enormous administrative and financial difficulties for local governments preparing for an election at the eleventh hour." JA 102. The lower court heard

testimony that if the interim plan used existing VTDs, voters would not have to be reassigned and issued new voter registration cards. Additionally, by not changing the VTDs, counties could potentially avoid having to submit any voting changes to the Department of Justice for preclearance. *Id.* Had the court below even tried to make as many VTD cuts as the state did in its enacted plans, there would have been no way to implement the plans under intense the time constraints that exist here. *Id.*

II. Here, the Likelihood of Success on the Merits is Irrelevant Because Some Plan Needed to Be Used and the Trial Court Could Not Use Earlier Plans or the Newly Enacted Plan

In the stay applications relating to the Congressional and State House Plans, the State of Texas argued that a preliminary injunction standard should govern the lower court's decision to draw interim plans—that the court should have determined the likelihood of success of claims that the state plans violated federal law before it made any changes to the legislatively-drawn districts. JA 96-98. As discussed above, that would have required interference with the Section 5 preclearance process in the District of Columbia and a determination of non-Section 5 challenges prior to a preclearance determination. Neither of those options was available to the San Antonio Court. Moreover, some plan needed to be put in place for the beginning of the rapidly approaching 2012 election cycle.

Ultimately, the need for an interim plan in this situation is an emergency of the state's own creation. If the State had submitted the House and Congressional plans to the Department of Justice for review, the Section

5 issues would have been undoubtedly resolved long ago. If the State had withdrawn its motion for summary judgment, the Section 5 issues would have likely been resolved by now. Other states covered by Section 5 of the Voting Rights Act obtained preclearance for their legislative redistricting plans in a timely fashion, and Texas has offered no explanation for its delay that would justify upsetting elections.

A. Using the Malapportioned Existing Plans, Especially In Light of Such Dramatic Population Changes, Would Prejudice Millions of Voters

In some situations where redistricting plans need to be put in place rapidly before an election, this Court has authorized the use of the benchmark plan even though it is indisputable that they are in violation of the "one person, one vote" requirements derived from the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court recently affirmed a decision by a three-judge court in Mississippi to continue using a malapportioned state legislative redistricting scheme because the Legislature could not agree on redistricting plans in time for 2011 legislative elections. *Miss. State Conf. of the NAACP v. Barbour*, 2011 U.S. LEXIS 7807 (U.S., Oct. 31, 2011).

This patently was not an option for the Texas congressional redistricting plan, where reapportionment after the 2010 Census resulted in the awarding of four additional congressional seats to Texas. Moreover, given the dramatic population growth in the state, that option used in either plan would have resulted in prejudice to millions of voters. The 2010 Census showed that the

State of Texas grew from a population of 20,851,820 in 2000 to a population of 25,145,561 in 2010—a population increase of approximately 20.6%. JA 133. Of that growth, the Latino population grew by 2,791,255, the African-American population grew by 522,570, and the Anglo population grew by fewer than 465,000. *Id.* On a smaller scale, the minority population in Harris County grew by over 700,000, while the Anglo population dropped by more than 82,000. JA 106. Thus, a new plan needed to be crafted for interim use.

B. To Order the Enacted Plan Implemented as the Interim Plan Would Nullify Section 5 of the Voting Rights Act

Had the court below ordered the plans passed by the state to be used as the interim plans, this not only would be in direct contradiction to the holding in *Lopez v. Monterey County*, but it also would have effectively nullified Section 5 of the Voting Rights Act. The State of Texas cannot be allowed to use delay of its own making as a back-door evasion of Section 5. The State could have sought preclearance for the State House plan after it was signed into law—it did not need to wait two and a half months until the congressional plan was passed. The State could have withdrawn its motion for summary judgment when it became clear that the Department of Justice opposed preclearance and found evidence of intentional discrimination. In a case such as this one, involving allegations of intentional discrimination and disputed facts relating to those allegations, summary judgment is a high hurdle. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Had the State withdrawn its motion for summary judgment when offered that option by Judge

Collyer in late September, it is possible that a trial and decision would have already resulted.

If extreme deference to the state's legislatively enacted plan was required, as urged by the State, Section 5 would have no role in guaranteeing federal protections against governmental bodies with a long and recent history of racial discrimination. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 439 (2006). The vital protections for minority populations offered by Section 5 could simply be avoided by forcing a district court to adopt the enacted, unprecleared plan as an interim plan. There are then two considerations that follow. First, this Court's decision on the standard used for the Texas interim plans will have widely-reverberating ramifications on all Section 5 jurisdictions. If this Court compels district courts drawing interim plans to merely rubberstamp the legislatively-enacted plans prior to preclearance being obtained or the constitutionality of the plans being determined, other covered jurisdictions will have a roadmap around Section 5. A jurisdiction seeking to get a new plan in place without federal oversight would only need to delay obtaining preclearance long enough to necessitate interim judicial action. The effects will spread far beyond the borders of the electoral districts of Texas.

Second, there was an extensive legislative record justifying Congress' reauthorization of Section 5 of the Voting Rights Act five years ago, and Texas is a prime example of why its protections continue to be necessary. The Department of Justice continues to interpose objections to retrogressive voting changes in Texas. JA 731-35. Governmental bodies in Texas unfortunately continue to act in a way that, if not checked, will disenfranchise minority voters. *Id.*; JA 808-11; JA 883-

84. Evidence from the Section 2 trial in San Antonio in this matter demonstrated beyond any doubt that racially polarized voting is still rampant across the state. JA 745-48; JA 841-43. To require the court below to impose Texas' enacted but unprecleared redistricting plans as an interim remedy would effectively repeal Section 5 of the Voting Rights Act and deny its protections to hundreds of thousands of minority voters.

III. The Trial Court Plans' Districts Are Not Unconstitutional Racial Gerrymanders

A. Race Did Not Predominate Over Traditional Redistricting Principles

Race was not a predominating factor in the drawing of any new minority opportunity districts in the court-drawn interim plans. In fact, in crafting the plans, the court below asserts that any minority opportunity districts were naturally arising, explaining that, "the Court has not intentionally created any minority districts. Rather, any additional minority districts resulted from the use of neutral districting principles and demographic changes." JA 107. For example, House District 26, in Fort Bend County just outside of Houston, had become 60.6 percent minority in the benchmark plan. JA 178. The state's plan "substantially reconfigured HD 26 in a way that made it irregularly shaped. Evidence presented at trial indicates that this reconfiguration may have been an attempt by the State to intentionally dismantle an emerging minority district." *Id.* Thus, in the interim plan, a minority district was created by subordinating race to traditional redistricting criteria—the state's plan was the plan in which racial considerations predominated over all other traditional criteria, including compactness.

Likewise, the minority coalition House District 54 was a result of subordinating race to the state constitutional admonition to minimize county cuts and the traditional redistricting criteria of respecting political subdivisions. In the benchmark plan, District 54 included a part of Bell County, necessitating a county cut and splitting the city of Killeen. Because of explosive minority population growth in Bell County, it was no longer necessary to cut Bell County and Killeen, and District 54 could be drawn wholly within that county. JA 111.

House District 107, a new minority district in Dallas County, was an unintentional result of the minority population growth in the county. JA 107-08. In Dallas County, the African-American population increased by over 97,000 and the Latino population increased by more than 243,000. The Anglo population, on the other hand, decreased by nearly 200,000. JA 108. The interim plan deferred to the state's enacted plan by removing two house districts from the county's delegation. JA 107. In the state's plan, the Latino districts in Dallas County were significantly overpopulated when compared to the ideal population. JA 106. The interim plan more closely adheres to the equal population principle than does the state's plan—given this fact, in a county where the minority population is over 65%, an additional minority opportunity district was unavoidable unless the district court purposely attempted to fragment the minority population. JA 108. Again, this is a situation in which the court below prioritized traditional redistricting criteria over race, and because of huge minority population growth, additional minority districts were the natural result.

Congressional District 33, the new congressional district added in the Dallas-Fort Worth metroplex in the interim plan, is prime example of a place where traditional redistricting criteria clearly predominated. The state's congressional plan also added a new district in the region, and also designated it as Congressional District 33. The version of Congressional District 33 drawn by the court is substantially more compact than the Congressional District 33 in the state's plan. JA 146. The interim plan district 33 is also contained wholly within Tarrant County, respecting political subdivisions, whereas the state's district 33 spans Tarrant, Parker, and Wise counties. JA 146-47. The interim plan Congressional District 33 is majority-minority, but it respects more traditional redistricting criteria than the version of that district in the state's plan.

The interim plan's configuration of Congressional Districts 35 and 25 are substantially more compact and less susceptible to racial gerrymandering charges than what the state did in its enacted plan. The Congressional District 35 constructed in the interim plan defers to the state's enacted plan in that it is a new Latino opportunity district anchored in Bexar County and stretching along Interstate-35. JA 142. The interim plan's Congressional District 35, is also a Latino opportunity district, but it is significantly more compact than the version in the state's plan, which, by visual examination, certainly raised questions of racial gerrymandering. JA MJA 1. Moreover, the interim plan's construction of district 35 did not require the dismantling of the crossover Congressional District 25 in Austin. The state's enacted plan dismantled this district, dividing a historic African American community in the process. JA 897-902; JA 903-05. In addition to the questions of intentional discrimination

surrounding the destruction of that district, the court below acknowledged that the dismantling of that district could cause retrogression problems. *LULAC v. Perry*, 548 U.S. at 446 (Kennedy, J.) (recognizing that the existence of districts "where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process" is relevant in a Section 5 analysis.) JA 144. Maintaining Congressional District 25 also minimized the districts between which the city of Austin was split—another traditional redistricting criterion. Thus, the interim plan creates a compact new minority opportunity district and maintains a minority crossover district while being more respectful of compactness and political subdivisions than the state's enacted plan.

In short, what the court below did was simply refrain from intentionally dismantling naturally-arising coalition districts. House District 107 is an example of this. The lower court also refrained from drawing bizarrely shaped districts fragmenting fast-growing Latino and African-American populations. House District 26 and Congressional District 33 are examples of this. Finally, the court below, in an attempt to maintain the status quo, refrained from intentionally dismantling performing crossover, influence, and coalition districts in which substantial minority populations were electing candidates responsive to their needs. House District 149 and Congressional District 25 are examples of this. All of these approaches were more respectful of traditional redistricting criteria than were the state's enacted plans, and none of these approaches came close to prioritizing race over traditional redistricting criteria. The lower court did not go beyond what is required by the Voting Rights Act.

B. Districts Are Narrowly Tailored to Comply with the Voting Rights Act

However, even if they were drawn intentionally as coalition districts, the district court would be justified in doing so based upon the statutory constraints applied to court-drawn plans. In a drawing an interim plan, a district court should comply with Section 2 of the Voting Rights Act. In *Abrams v. Johnson*, this Court noted that, "[o]n its face, § 2 does not apply to a court-ordered remedial redistricting plan, but we will assume courts should comply with the section when exercising their equitable powers to redistrict." 521 U.S. at 90. Thus, regardless of any finding of a Section 2 violation in the state's enacted plan, a court drawing an interim plan must comply with Section 2. If that court knows that there is a district that can be drawn to be over fifty percent combined African-American and Latino citizen voting age population and that the two groups are politically cohesive in that region, the court would be compelled to draw that district in order to comply with Section 2 of the Voting Rights Act.

In compliance with the first prong of the threshold test described in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), for determining where Section 2 compels the drawing of new minority districts, all the districts drawn in the interim plan are reasonably compact. The court below specifically noted that all the districts in the interim State House plan are reasonably compact. JA 118. Two minority districts in the interim plan—Congressional Districts 35 and 33—are significantly more compact than their counterparts in the state's Congressional plan. JA MJA 1; JA MJA 2.

The "additional" minority districts challenged by the State in its stay applications—House Districts 26, 54, and 149, and Congressional District 33—are all above 50% in minority citizen voting age population. JA 350; JA 381. Moreover, the lower court had before it of evidence of racially polarized voting across the state, with white voters, when in the majority, consistently voting to defeat minority-preferred candidates. JA 745-48; JA 841-43. Finally, in each of the areas in which a coalition district was drawn, the court below had ample evidence of the political cohesion of minority groups in that area to justify the drawing of those districts. As it relates to Congressional District 33 and House District 107, evidence was presented at trial on the political and electoral coalition between Latino and African-American voters in the Dallas-Fort Worth region. JA 753-54; JA 765-66; JA 822-24; JA 825-27; JA 830-31; JA 846-47: JA 918-920. As it relates to House District 149, evidence was presented at trial on the coalition between African-American, Latino and Asian Americans in Harris County. JA 844; JA 779-80. As it relates to House District 26, all the testimony on African American and Latino coalition in the greater Houston area supported the drawing of that district. JA 779-80; JA 782-83; JA 814-819. Likewise, the court also had evidence of minority electoral cohesion in Bell County. JA 837-39.

Thus, even had the court below affirmatively drawn the additional minority opportunity districts in the interim Congressional and State House plans because it believed them to be compelled by Section 2 of the Voting Rights Act, these districts would have been narrowly construed, respecting traditional redistricting criteria, to achieve a compelling governmental interest.

V. It Is Important that Voters Not Be Subjected to the Irreparable Harm of an Unconstitutional, Racially-Discriminatory Plan, Motivated by Discriminatory Intent and Dilutive of Minority Voting Strength

A deferral to the state's redistricting plans, and their implementation for use in the 2012 elections creates the very likely potential that unconstitutional plans will determine who is elected to represent the voters of Texas in the State House and the United States House of Representatives. The dilution of minority voting strength, even in just one election cycle, has lasting implications and causes irreparable injury. *Reynolds v. Sims*, 377 U.S. 533, 562, 565 (1964). Using the enacted, unprecleared plans as an interim remedy would result in an irreparable harm to the millions of minority voters in the state, and would be a stain on Texas, further cementing its reputation as a state where racial discrimination is, to this day, a commonplace approach to governance.

In addition to the devastating harm to voters, conducting the 2012 elections under an unconstitutional scheme should also be avoided because it would undermine the credibility and integrity of those elections, and the legitimacy of those elected to office under those plans. Given the state's "long history of racial discrimination," *LULAC v. Perry*, 548 U.S. at 439, the court below was right to err on the side of preserving the status quo in order to avoid even further detriment to these historically-disadvantaged populations.

CONCLUSION

Appellees respectfully request that this Court lift the stay on the implementation of interim plans ordered by the District Court in the Western District of Texas and affirm that the lower court applied the correct legal standards in its crafting of the interim plans.

Respectfully submitted,

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REPLY BRIEF

NOS. 11-713, 11-714, 11-715

In the Supreme Court of the United States

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

WENDY DAVIS, ET AL.,

PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,

On Appeal from the United States District Court for the Western District of Texas

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REPLY BRIEF FOR APPELLANTS

Despite the parties' sharply different bottom lines, there is a surprising amount of common ground. That is because Appellees dedicate much of their briefing to attacking arguments Texas does not advance. For example, Appellees insist that Texas' new legislatively enacted election maps cannot take effect without preclearance. Texas has never argued to the contrary. Appellees likewise emphasize that the Texas court could not decide the Section 2 and Equal Protection claims on the merits until the preclearance proceedings had run their course. Texas agrees. Finally, Appellees argue that when the pre-existing map cannot be used and the new maps have not been precleared, a court must order an interim solution. Once again, on that basic point Texas heartily concurs. But as to the nature of that interim solution and the extent to which the court must defer to a sovereign State's duly-enacted redistricting maps and make findings of likely defects before redrawing them, there is sharp disagreement.

Appellees' briefs leave no doubt where the district court's errors originated. Appellees repeatedly insist that the Texas court proceeded "exactly" as it should have and was "unimpeachably correct." Rodriguez Br. 21; Davis Br. 2. But Appellees' briefs also leave no doubt that the Texas court's approach was fundamentally misguided. They continue to argue that a jurisdiction that has enacted new maps and promptly submitted those maps for preclearance should be treated no differently from a recalcitrant jurisdiction or one where the legislature has failed to discharge its

responsibility to draw new maps. But a jurisdiction actively seeking preclearance does not need to be incentivized to seek preclearance, and a court drawing a map after a legislative deadlock has nothing to which it can defer.

Appellees complain that any deference to the legislative map in drawing an interim map will circumvent the preclearance process. But that ignores the critical point that an "*interim*" map is just that. Unlike a map drawn by a court after legislative deadlock, an interim map will be used for only one election cycle and in no way obviates the preclearance obligation. Appellees also suggest that an inquiry into the likelihood of success intrudes on the D.C. court's jurisdiction, but it is hornbook law that a likelihood of success inquiry is different from, and does not prejudge, the merits. Moreover, the Texas court's unwillingness to consider the likely merits of Appellees' Voting Rights Act ("VRA") and Equal Protection claims makes even less sense in light of the acknowledged need for any judicial map to consider VRA and Equal Protection limits.

Finally, Appellees' efforts to defend the Texas court's maps only underscore the standardless nature of that court's undertaking. Appellees applaud the judicially drawn maps for avoiding the Section 2 and Equal Protection problems they allege, without acknowledging that, as a consequence, the court's maps were based on mere *allegations*, rather than on findings of a demonstrated likelihood of success. Appellees emphasize that the judicial maps actually respected the legislative maps in certain respects without explaining why that is laudable or even permissible under their view of the Texas

court's function. The Department of Justice ("DOJ") for its part recognizes that the judicially drawn Texas House and congressional maps are problematic and that a remand is in order, but its explanation borders on the incoherent. For example, DOJ correctly faults the Texas court for its mistaken and unexplained belief that two new opportunity-to-elect districts needed to be drawn in the congressional map, but given DOJ's view of the Texas court's considerable discretion to redraw a map *without* assessing likely defects in the duly-enacted plan, it is not clear why any explanation was necessary.

In the end, the Texas court's role cannot be as standardless and unconstrained as Appellees contend. Such a role risks embroiling courts in unnecessary racial line-drawing and can hardly be described as judicial. And nothing compels such a role when the state political process has not deadlocked and preclearance is being actively pursued. Under those circumstances, the use of the legislative plan as the interim plan subject to the well-defined preliminary injunction standard is clearly the preferable course and ensures that any judicial consideration of race is both necessary and fully consistent with the Constitution. This Court should "say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than a federal court." *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

Here, the Texas legislature has faithfully discharged the State's "duty and responsibility." Given the exigencies of time and the Texas court's

profound misunderstanding of the governing legal principles, a remand to that court would provide no assurance of a timely and legally appropriate resolution to Texas's predicament. Accordingly, this Court should order the use of the State's duly-enacted maps as the interim plans for the 2012 elections, while Texas continues to pursue preclearance before the D.C. court.

ARGUMENT

I. APPELLEES' RENEWED EFFORT TO BLAME TEXAS FOR THE EXIGENCY IS FUNDAMENTALLY MISTAKEN

As they did in their papers opposing a stay, Appellees once again suggest that delays in the redistricting process are "entirely the fault of the State of Texas." Davis Br. 2. Appellees simultaneously complain that the redistricting process was not deliberate enough. Appellees cannot have it both ways. In reality, given the significant population changes in Texas, the need to redraw four different statewide maps, and the nearly unprecedented responsibility to accommodate four new congressional seats, Texas moved with remarkable dispatch, while using the latest technologies to ensure public participation.

At bottom, Appellees' real complaint is that Texas chose judicial preclearance, rather than administrative preclearance, and then had the temerity to move for summary judgment. But a covered jurisdiction cannot be faulted for pursuing judicial preclearance. Indeed, if as a practical matter judicial preclearance is unavailable and a covered jurisdiction must seek preclearance from an

executive branch official before its duly-enacted law can take effect, then Section 5's intrusion into state sovereignty is even greater than previously understood.

A. Appellees Mischaracterize the Process Through Which Texas' New Plans Were Enacted

1. Appellees complain that the legislative redistricting process was "cloaked in secrecy," Rodriguez Br. 4, but, in reality, nearly every aspect of the process was documented publicly on the internet, *see* Texas Br. 8. Pursuant to House and Senate rules, all legislative hearing notices, proposed redistricting plans, and proposed amendments were posted on the website of the Texas Legislative Council. *Id.* All proposed districting plans and amendments were accessible through "DistrictViewer," a publicly available internet-based application. The Texas Legislative Council also maintained two terminals that offered public access to the State's district modeling software.

Moreover, as Texas explained at length, both the House and Senate held numerous public hearings on redistricting, both before and after the release of the critical census data on February 17, 2011. *See* Texas Br. 7–10. Even before the 82nd Legislature convened its regular session, the House committees responsible for redistricting held a total of 14 public hearings in 12 different cities throughout the State.[1]

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[1] *See* House Committee on Redistricting 2010 Hearing Calendar, http://www.capitol.state.tx.us/Committees/Meetings

Similarly, the Senate committee held seven public hearings on the upcoming redistricting process in seven different cities before the regular session.[2] Both the House and Senate also held public hearings and public floor debates on each districting plan before enactment. *See* Texas Br. 8–10.

2. Appellees also mistakenly contend that the legislature "completely shut out minority legislators," from the redistricting process. Davis Br. 8; Rodriguez Br. 3–8. In the first place, it should be emphasized that in a diverse state like Texas, there are "minority legislators" in both parties.[3] Thus, Appellees' real complaint is the extent to which their

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[2] *See* Senate Committee on Redistricting 2010 Hearing Calendar, http://www.capitol.state.tx.us/Committees/MeetingsByCmte.aspx?Leg=81&Chamber=S&CmteCode=C625 (last visited Jan. 2, 2012).

[3] *See Johnson v. DeGrandy*, 512 U.S. 997, 1027 (1994) (Kennedy, J., concurring in part) (noting that the "assumption that majority-minority districts elect only minority representatives, or that majority-white districts elect only white representatives" is "false as an empirical matter," and "reflects the demeaning notion that members of the defined racial groups ascribe to certain 'minority views' that must be different from those of other citizens"); *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (rejecting assumption, implicit in much race-based districting, that "members of the same racial group . . . think alike, share the same political interests, and will prefer the same candidates at the polls").

preferred *political party* was involved in the legislative process. And even then, Appellees' contentions are mistaken.

For example, in the Senate—where Appellee Senator Wendy Davis (who is not a minority) complains she was excluded from the process, *see* Davis Br. 8—the Senate leadership and staff made clear that they were willing to meet with *any* Senator who requested a meeting. *See* 2SJA 41–42.[4] Indeed, perhaps no legislator participated in the redistricting process *more* than Senator Davis. She testified at a public hearing on redistricting, met personally with the Chairman of the Senate redistricting committee, and offered several different proposals and amendments. 2SJA 41–42. Some of Senator Davis's proposals—such as keeping District 10 within Tarrant County—were incorporated into the final map. 2SJA 41. Senator Davis may not be happy with *every* aspect of the legislatively enacted map, but she cannot remotely claim that she was "shut out" of that process.

Other Appellees, too, not only participated in the redistricting process, but achieved some of their objectives. For instance, MALC and MALDEF participated directly in the redistricting process by meeting with House leadership and staff. Several of MALDEF's recommended changes to the proposed

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[4] 2SJA refers to the Second Supplemental Joint Appendix. JA refers to the Joint Appendix. MJA refers to volume 5 of the Joint Appendix, which contains the electoral maps and accompanying data.

House plan are reflected in the legislatively enacted plans. *See, e.g.*, 2SJA 38.

The enacted plans also reflect the input of numerous other minority representatives. For instance, the ten-member Bexar County delegation, which includes eight minority representatives (and seven Democrats), worked together to produce a proposed map for the county's Texas House districts. *See* 2SJA 48. That map was endorsed by 9 of the 10 Bexar County representatives and was included in the legislatively enacted plan. *Id.* Similarly, the El Paso County and Travis County delegations—both of which include several minority representatives—unanimously endorsed maps for their counties, which were included in the final enacted map. 2SJA 49. And the basic structure of congressional district 35 as passed by the legislature was originally proposed by MALDEF and was supported by San Antonio state house representatives Mike Villareal and Joaquin Castro. *See* Tr. 916:23–917:1.

3. At the same time they assail the process for being insufficiently deliberative, Appellees also renew their complaint that the redistricting process was unduly "delayed," *see* Rodriguez Br. 4; Task Force Br. 42; Davis Br. 13–14. But that simply ignores the magnitude of the task before the Texas legislature. All parties agree that the population growth and shifts in Texas were nearly unprecedented, and necessitated the redrawing of four different statewide electoral maps.[5] The task

[5] The new map for the Texas State Board of Education was not challenged, and has received preclearance from the D.C. court.

for the congressional map was even more daunting, as four new districts needed to be accommodated. Democracy takes time, and the legislature wanted to ensure public participation, as discussed above.

Although Appellees seem to ignore the practical difficulties facing the legislature, this Court has recognized "the reality that States must often redistrict in the most exigent circumstances—during the brief interval between completion of the decennial census and the primary season for the general elections in the next even-numbered year." *Growe v. Emison*, 507 U.S. 25, 35 (1993). Given the task before it, Texas acted with admirable dispatch, finishing its process on July 18, 2011, approximately five months after the release of the necessary census data. The State submitted its new plans to the D.C. court for preclearance one day later.

That process compares favorably to the redistricting timetables in other covered jurisdictions, despite the greater complexity of Texas' task. For instance, North Carolina passed new redistricting plans on July 27, 2011, and submitted those plans for preclearance on September 2, 2011.[6] Georgia's legislature passed its three new redistricting plans in late August and September, 2011, and submitted those plans for preclearance on October 24, 2011.[7] The independent commission

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[6] *See* Justin Levitt, *All About Redistricting: North Carolina*, http://redistricting.lls.edu/states-NC.php.

[7] *See* Justin Levitt, *All About Redistricting: Georgia*, http://redistricting.lls.edu/states-GA.php.

that conducts redistricting in California approved final plans for the state house, state senate, and U.S. House on August 15, 2011, and the state submitted those changes for preclearance on November 15, 2011.[8]

Texas' timetable also compares favorably with redistricting efforts in previous cycles that eventually made their way to this Court. For example, the initial Georgia congressional redistricting plan that—after several efforts to accommodate objections from DOJ—culminated in *Miller v. Johnson*, was not enacted until August 1991, and not submitted for preclearance until October 1, 1991. *See* 515 U.S. 900, 906 (1995).[9]

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[8] *See* Justin Levitt, *All About Redistricting: California*, http://redistricting.lls.edu/states-CA.php.

[9] To the extent Appellees fault Texas for its relatively early primaries, *see* Davis Br. 13–14, their complaint is both misguided and misdirected. It is misguided because in a competition between Texas' sovereign prerogative to set election deadlines and the procedural deadlines for preclearance, the latter should not dictate the former. It is also misdirected because much of the time pressure is the result of the federal statute that furthers the admirable goal of ensuring that members of the military serving abroad are given a full opportunity to vote. *See* 42 U.S.C. § 1973ff, *et seq.*

B. Texas Cannot Be Faulted for Pursuing the Statutory Mechanism of Judicial Preclearance or Summary Judgment

1. Judicial Preclearance Is Not a Disfavored Option

Appellees and the United States fault Texas for pursuing judicial preclearance rather than administrative preclearance. *See* United States Br. 23–26; Task Force Br. 42–43; Davis Br. 14–15. But, while it is certainly understandable that DOJ would prefer that covered jurisdictions seek preclearance from DOJ in the first instance, it would be profoundly wrong to view judicial preclearance as a mechanism for delay rather than a clear and necessary option for covered jurisdictions.

Texas was under no obligation to seek administrative preclearance. Judicial preclearance is expressly authorized by the VRA. *See* 42 U.S.C. § 1973c(a). Yet Appellees' view, in which covered jurisdictions are faulted for seeking judicial preclearance and then punished through the imposition of interim maps giving zero deference to the legislatively enacted maps, would effectively eliminate judicial preclearance as a viable option.

That position is not only antithetical to the statutory scheme, but profoundly problematic as a constitutional matter. This Court has recognized that Section 5's intrusion on state sovereignty raises serious constitutional questions. *See Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009). While reversing the normal presumption that duly-enacted laws take immediate effect and forcing covered jurisdictions to go to court and obtain

a favorable declaratory judgment is already a remarkable imposition, it at least guarantees the State a neutral judicial forum. Forcing States to go before *executive branch* officials would be an even greater intrusion on the "integrity, dignity, and residual sovereignty of the States." *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011).

That is particularly true since experience has demonstrated that administrative preclearance can sometimes be the source of constitutional difficulties, rather the solution. *See, e.g., Miller*, 515 U.S. at 917–27. If administrative preclearance is simply an option available for the convenience of covered jurisdictions, then it ameliorates the inherent burdens of Section 5. *See Morris v. Gressette*, 432 U.S. 491, 504 (1977) (noting that the purpose of the administrative preclearance option is to reduce the "potential severity" of the "extraordinary federal remedy" of preclearance). But if, as Appellees and the United States suggest, administrative preclearance is the *only* practical option for covered jurisdictions and seeking judicial preclearance is deemed a delay tactic, then the constitutional difficulties of Section 5 are exacerbated, not ameliorated.

In all events, Appellees and the United States vastly overstate the expedition provided by administrative preclearance. As the State *amici* explain at length based on firsthand experience, the administrative preclearance process is itself quite burdensome. *See* Alabama Br. 6–13. Before even seeking administrative preclearance, a covered jurisdiction must compile and submit extensive information about both the old and new voting

practices, and how those practices will affect minority voters. *See* 28 C.F.R. § 51.27. Those submissions "may take weeks or even months to prepare." Alabama Br. 8. The burdens of that process are well illustrated by the substantial time between enactment of a new plan and submission of that plan for preclearance in the covered jurisdictions discussed above. *See supra* 9–10. North Carolina and Georgia both needed a month to prepare their administrative submissions, and California took three months.

Even after that burdensome process is finished, DOJ may still request that the jurisdiction supplement its filing with additional materials. 28 C.F.R. § 51.37(a). After that information is submitted, the clock resets and DOJ has 60 *more* days to approve or deny preclearance. *Id.* In sum, even "largely innocuous" changes that are submitted for administrative preclearance can require months of preparation and review. *See* Alabama Br. 8–10.[10]

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[10] Texas' decision to seek administrative preclearance of its recently enacted voter identification law further illustrates this point. Texas sought administrative preclearance from DOJ on July 25, 2011, less than a week after filing its judicial preclearance action for its redistricting maps. On September 23, 2011, at the very end of the 60-day review period, DOJ requested additional information. Nearly two months after that, on November 16, 2011, DOJ asserted that the State's submission was insufficient. Over 160 days have now elapsed since Texas submitted its Voter ID law for preclearance, and DOJ still has not made a final decision about whether it will interpose objections.

Indeed, given that DOJ has objected to Texas' state house and congressional redistricting plan in D.C. court, it is a near certainty that the process would have been slower had Texas sought administrative preclearance first. If Texas had taken the administrative route, DOJ would have interposed objections, at the earliest, 60 days after Texas' initial submission, on September 16, 2011. That date would have been postponed even further if DOJ requested additional information. Thus, if Texas had pursued the administrative option first, it would have likely delayed matters by several months, if not longer. The United States suggests that Texas should have pursued both options simultaneously, *see* United States Br. 23–24, but the D.C. court would have almost certainly held the judicial proceedings in abeyance and awaited the outcome of the administrative process.

Finally, as the experience of Georgia in *Miller v. Johnson* dramatically demonstrates, seeking and obtaining administrative preclearance is not necessarily expeditious, and can give rise to collateral litigation over whether changes required by DOJ are consistent with the Constitution. *See* 515 U.S. at 917–27. For all of these reasons, it is profoundly misguided to fault Texas for exercising its statutory right to seek judicial preclearance.

2. Texas Is Not Responsible for Delays in the Preclearance Process

Appellees also distort the record in blaming Texas for delays in the preclearance process. *See* Davis Br. 16–22. As Texas explained, it sought judicial preclearance one day after its final map was

signed into law, and has taken numerous steps to expedite that process. *See* Texas Br. 10–13. For example, Texas made extensive informal submissions of information to DOJ to avoid the need for protracted discovery; voluntarily provided additional information (at DOJ's request) and arranged for interviews of state officials; filed a motion to expedite; sought permission to file an early motion for summary judgment; and pressed for a prompt trial date. *Id.*

In contrast, DOJ declined the opportunity to file an early answer and refused to accept Texas' proposal for an early trial date of October 10, 2011. *Id.* Similarly, Appellees contributed to the delays by intervening in the preclearance proceeding, designating their own expert witnesses, and requesting extensive discovery.

3. Neither Texas' Motion for Summary Judgment Nor the D.C. Court's Denial of That Motion Is Relevant

Appellees cannot seriously dispute Texas' multiple efforts to expedite the judicial preclearance proceedings. Instead, they fault Texas for pursuing a motion for summary judgment rather than moving immediately to trial, and attempt to place great weight on the D.C. court's denial of that motion. But there is certainly nothing sinister in Texas' effort to pursue summary judgment. Had that motion succeeded, it would have expedited matters

considerably.[11] As it is, the motion served to clarify the D.C. court's view of the governing legal standards prior to trial. In any event, Section 5's judicial preclearance option is designed to provide an expeditious route to a declaratory judgment. A trial should not be inevitable.

Appellees attempt to make much of the D.C. court's denial of Texas' motion, and repeatedly cite the court's reference to Texas using an "improper standard." *See* Task Force Br. 21; Davis Br. 21; NAACP Br. 3–4, 17–18; Rodriguez Br. 16. But all the D.C. court has decided is that summary judgment is not appropriate. In doing so, the D.C. court rejected the standard Texas had proposed to judge whether its redistricting plans violate Section 5—namely, a bright-line rule that only districts with a certain minority citizen voting age population were protected by Section 5. *See* Task Force Addendum 30A–35A. Texas should not be faulted for proposing a simple bright-line test that, unlike the standard embraced by the D.C. court, does *not* make a trial all but inevitable.

In any event, the D.C. court's denial of the motion for summary judgment has no relevance to the propriety of either Texas' redistricting or the Texas court's interim maps. In rejecting the standard Texas proposed in its motion for summary judgment, the D.C. court did not find that Texas

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[11] Indeed, that is precisely what happened with Texas' map for the Board of Education, which the D.C. court precleared on September 22, 2011.

used an improper standard or methodology in *drawing the new redistricting maps*. Rather, the court simply declined to accept the standard proffered in Texas' motion for summary judgment. Nothing in the court's ruling casts doubt on the legal merits of the maps themselves or provides any justification for the remarkable interim maps drawn by the Texas court.

II. A PROPERLY RESTRAINED APPROACH TO INTERIM RELIEF IS COMPELLED BY THIS COURT'S PRECEDENTS AND IS FULLY CONSISTENT WITH SECTION 5

A. Texas Has Never Disputed That It May Not Permanently Implement Its New Maps Until It Receives Preclearance

Appellees and the United States spend a substantial portion of their briefs arguing a point that Texas has never disputed—namely, that Texas' legislatively enacted plan is "legally unenforceable unless and until precleared." *See* Davis Br. 29–33; Rodriguez Br. 23–25; Task Force Br. 36–38, 44–45; United States Br. 11–13. Not once in this proceeding has Texas argued otherwise, as the Texas court acknowledged. *See* JA 124 ("[S]ince the inception of this lawsuit, the State has admitted that its enacted plan must be precleared prior to implementation.").

Appellees and the United States also go to great lengths to establish another point that Texas does not dispute—namely, that since population growth has rendered the previous plans unusable and the preclearance proceedings have bogged down, the Texas court must impose interim maps while preclearance is pending. But the fact that an

interim plan must be ordered is only the beginning, not the end, of the inquiry.[12] The question presented here is what standards govern the entry of such interim maps. Appellees' notion that any deference to the enacted plan in constructing interim plans is tantamount to circumventing the preclearance process is fundamentally misguided. Interim remedial maps are just that, and do not obviate the need for preclearance. But they remain quintessential remedial orders subject to the normal rules of deference and equitable relief.

When faced with the contingency of rapidly approaching elections but no final decision on preclearance of the State's new plans, the district court should have taken a restrained approach to interim relief that was cognizant of the deference owed to duly-enacted state laws, the proper role of the judiciary, and basic principles governing equitable relief. *See* Texas Br. 33–46. Applying those principles, the legislatively enacted maps should serve as the starting point for any interim electoral maps. This Court's consistent emphasis that judicial intervention is "unwelcome," that "the primary locus of responsibility" lies with the legislature, *LULAC v. Perry*, 548 U.S. 399, 415–16 (2006), and that courts "should be guided by

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[12] For most voting changes subject to Section 5, the need for an "interim" remedy simply does not arise: the assumption is that, until the voting change receives preclearance, the pre-existing (or "benchmark") policy will continue to govern. In this case, however, that is not an option because of significant population growth and the addition of four new congressional districts.

legislative policies" whenever possible, *Abrams v. Johnson*, 527 U.S. 74, 79 (1997), would seem to compel as much.

Using the enacted maps as the starting point for interim relief neither constitutes preclearance nor interferes with the preclearance process in D.C. court. Instead, it simply recognizes that the "presumption of good faith that must be accorded legislative enactments," *Miller*, 515 U.S. at 916, fully attaches to the legislative maps, even though preclearance remains pending. The district court is accordingly bound to "follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution." *White v. Weiser*, 412 U.S. 783, 795 (1973).

The legislatively enacted maps are only the starting point, and the district court may alter or modify those maps, but only if it makes at least a preliminary finding that such alteration or modification is needed to prevent a likely violation of law. *See Upham v. Seamon*, 456 U.S. 37, 43 (1982) (holding that "the district court's modifications of a state plan" must be "limited to those necessary to cure any constitutional or statutory defect"). And, even if the district court makes such a finding, any alteration or modification must be narrowly tailored to addressing that likely violation of law. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (equitable relief "should be no more burdensome to the defendant than necessary to provide complete

relief to the plaintiffs"); *Whitcomb v. Chavis*, 403 U.S. 124, 160–61 (1971) (vacating remedial order that "broadly brush[ed] aside state apportionment policy without solid constitutional or equitable grounds for doing so").

B. *Upham*, not *Lopez* and *McDaniel*, Is Controlling

In *Upham*, this Court held that an "interim reapportionment order" in a redistricting case requires "'reconciling the requirements of the Constitution with the goals of state political policy.'" 456 U.S. at 43 (quoting *Connor v. Finch*, 431 U.S. 407, 414 (1977)). The Court stated in no uncertain terms that an "appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those *necessary to cure any constitutional or statutory defect*." *Id.* at 43 (emphasis added). That is, in the absence of any finding that some aspect of the challenged reapportionment plan "offended either the Constitution or the Voting Rights Act," the district court "was not free, and certainly was not required, to disregard the political program of the Texas State Legislature." *Id.* The Court accordingly vacated an interim redistricting order that altered the boundaries of districts in an unprecleared plan that had not been found unlawful under the VRA or the Constitution.

Like the district court, *see* JA 186, Appellees seek to distinguish *Upham* on the ground that the Attorney General had objected to only two districts in the redistricting plan at issue, thereby signifying that the remaining districts were in compliance with

Section 5.[13] *See* Task Force Br. 45–47; NAACP Br. 15–16; Rodriguez Br. 26–28; Davis Br. 39–41. But that ignores the critical fact that the legislative plan to which this Court demanded deference in *Upham* had *not* been precleared; indeed, unlike this case, preclearance had actually been *denied*.

Appellees attempt to skirt that reality by emphasizing that the balance of the map in *Upham* "*had been precleared*." Task Force Br. 46 (emphasis in original). But preclearance does not work that way; it is an all-or-nothing determination. As DOJ itself made clear in the D.C. court proceeding, it "disagrees with the assertion . . . that [the D.C. court] could preclear only part of a redistricting plan." 2SJA 70. As DOJ has explained, "Section 5 preclearance does not function like a line-item veto where parts of the redistricting plan are approved for implementation." *Id.*

To be sure, the denial of preclearance in *Upham* did focus on particular districts, and thus the regional court could rely on DOJ's denial in fashioning an interim map. But it is DOJ's own position that any denial of preclearance is tantamount to a wholesale denial of preclearance. Indeed, DOJ's denial of preclearance is what necessitated an interim map in *Upham*. Moreover,

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[13] In the pending preclearance case, DOJ did not object to the Texas Senate plan at all. *See* JA 407. Thus, even under Appellees' cramped reading of *Upham*—which turns on whether DOJ has objected to the State's plan in the preclearance process—the district court's modifications to the State's Senate plan were impermissible.

the fact that DOJ's denial focused on only two districts hardly suggests that—in the absence of any denial—a regional district court is freed from the obligation to modify the State's legislatively enacted maps only to the extent "necessary to cure any constitutional or statutory defect." *Upham*, 456 U.S. at 40–41. Once again, *Upham* makes clear that—far from being a nullity—even an unprecleared plan is a valid statement of state policy that should form the starting point for an interim map.

In sum, if Appellees were correct that an unprecleared plan is a nullity or that a regional three-judge court undermines Section 5 by viewing an unprecleared plan as a valid statement of state policy, then *Upham* would have come out the other way. Appellees' reading of *Upham* would also lead to the anomalous result that a State's legislatively enacted plan is entitled to less deference when a judicial preclearance proceeding is pending than after administrative preclearance has been *denied*.

Appellees continue to rely heavily on *Lopez v. Monterey County*, 519 U.S. 9 (1996), a case that is readily distinguishable. This Court held in *Lopez* that a covered jurisdiction may not hold elections under an unprecleared plan where it "did not preclear the ordinances as required by § 5," even though it had been on notice for "several years" that preclearance was required. 519 U.S. at 21; *see also id.* at 24 ("The County dismissed its declaratory judgment action before the District Court for the District of Columbia made any findings, and it has never submitted the consolidation ordinances to the Attorney General for review.").

The critical fact in *Lopez* was that the covered jurisdiction had "not discharged its obligation [under federal law] to submit its voting changes to either of the forums designated by Congress." *Id.* at 25. The Court emphasized that "[t]he goal of a three-judge district court facing a § 5 challenge must be to ensure that the covered jurisdiction *submits its election plan to the appropriate federal authorities* for preclearance as expeditiously as possible." *Id.* at 24 (emphasis added). That has already happened here, and Texas has always recognized its obligation to seek preclearance before its plan can take permanent effect. Unlike the case of a recalcitrant jurisdiction, there is no need to order Texas to seek preclearance. And unlike the situation in *Lopez* where the regional district court was addressing a longstanding stalemate created by the covered jurisdiction's efforts to *permanently* implement its plans without preclearance, there is no question here that the interim order is truly interim and that preclearance proceedings will run their course.

Indeed, *Lopez* affirmatively supports Texas' position, as it makes clear that the drawing of an interim map does not interfere with the jurisdiction of the D.C. court and is analytically distinct from the question whether the plan has been precleared. As the Court explained, when a three-judge district court is faced with claims of a Section 5 violation, the Court "may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, *what temporary remedy, if any, is appropriate*." *Lopez*, 519 U.S. at 23 (emphasis added).

Appellees' reliance on *McDaniel v. Sanchez*, 452 U.S. 130 (1981), is equally misplaced. That case says nothing about the standards for interim relief while preclearance is pending. It instead addressed the different question of whether a districting plan passed by a state legislature in response to a court order finding the prior plan unlawful must be submitted for preclearance. The Court answered that question in the affirmative, holding that the district court erred by adopting a county's permanent remedial plan "before it had been submitted to the Attorney General or the United States District Court for the District of Columbia." *Id.* at 153. The Court reiterated that the preclearance requirement is "applicable" to all voting changes "reflecting the policy choices of the elected representatives of the people," even if enacted in response to a judicial decision. *Id.* That principle has no direct application here. Indeed, as explained above, Texas has never disputed that the preclearance requirement is "applicable." This case involves the distinct question of what *interim* relief is appropriate when a State has not received its preclearance determination in time for an upcoming election. *McDaniel* is entirely silent on that issue.

C. Nothing in Section 5 or this Court's Precedents Barred the District Court from Making Preliminary Findings About the Appellees' Likelihood of Success on the Merits

1. Appellees and the United States contend that the Texas court was prohibited from making any findings about Appellees' likelihood of success on the merits before redrawing Texas' legislatively enacted

electoral maps. *See* Task Force Br. 38–41; NAACP Br. 21; Davis Br. 36–39; United States Br. 16–17; Rodriguez Br. 28–31.[14] As Texas explained, those arguments are misplaced. *See* Texas Br. 50–52.

Like the Texas court, the Appellees rely heavily on *United States v. Board of Supervisors of Warren County*, 429 U.S. 642 (1977), and *Connor v. Waller*, 421 U.S. 656 (1975). But those cases merely hold that the D.C. court has exclusive jurisdiction to make a final determination of whether a covered jurisdiction is eligible for preclearance. In *Warren County*, a district court in Mississippi expressly concluded that the state's enacted districting plan "will not lessen the opportunity of black citizens of Warren County to participate in the political process." 429 U.S. at 646.

Similarly, in *Connor*, the district court "erred in *deciding the constitutional challenges* to the Acts based upon claims of racial discrimination." 421 U.S. at 656 (emphasis added); *see also McDaniel*, 452 U.S. at 150 n.31 (noting that the district court in *Warren County* impermissibly determined that "a reapportionment plan proposed by a covered jurisdiction complies with constitutional

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[14] The Rodriguez Appellees mischaracterize Texas' argument by suggesting that, under the State's position, the district court must conduct a "full analysis" under "Section 5, Section 2, and the Constitution." Rodriguez Br. 28. Texas has never taken that position. It has argued only that the court must make a preliminary finding of a *likelihood* of success on the merits, akin to the finding that a court must make prior to entering a preliminary injunction.

requirements"). Indeed, the Court's brief per curiam opinion in *Connor* specifically left open the possibility that the three-judge court could issue an interim order governing the upcoming election cycle, without remotely suggesting that doing so would interfere with preclearance or that such an order would be exempt from the normal rules governing equitable relief. *See* 421 U.S. at 656.[15]

Justice Kennedy's concurrence in *Branch v. Smith*, 538 U.S. 254 (2003), is to the same effect. That opinion cited *Connor* for the settled proposition that "[w]here state reapportionment enactments have not been precleared in accordance with § 5, the district court 'err[s] in deciding the constitutional challenges' to those acts." *Id.* at 283 (Kennedy, J., concurring) (quoting *Connor*, 421 U.S. at 656). Justice Kennedy further explained that even an alternative holding on a constitutional question—such as that reached by the lower court in *Branch*—could interfere with the preclearance process. *Id.* at 284. Indeed, the district court's alternative holding in *Branch* led DOJ to discontinue the preclearance process. *Id.*

These concerns are not remotely implicated by a *preliminary* finding regarding the plaintiffs'

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[15] The Task Force also relies on Section 14(b) of the VRA, 42 U.S.C. § 1973*l*(b), which provides that "[n]o court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment" pursuant to Section 5. Task Force Br. 38–39. Texas, of course, is not seeking a declaratory judgment from the Texas court with respect to the merits of its preclearance claims.

likelihood of success on their VRA and constitutional claims as part of the process of awarding interim relief. This Court has made clear that a regional three-judge court does not interfere with the preclearance process by considering "what temporary remedy, if any, is appropriate," while preclearance is pending. *Lopez*, 519 U.S. at 23; *see Connor*, 421 U.S. at 656. If such a preliminary finding is not required, it is difficult to imagine what, if any, standard would apply to govern the "unwelcome" judicial obligation of crafting an interim plan, or what metric this Court might apply in reviewing it. *See Ballard v. Commissioner of Internal Revenue*, 544 U.S. 40, 61–62 (2005) (emphasizing need for transparency in lower court decisions to effectuate appellate review).

Moreover, it is well established that a "likelihood of success" finding made in connection with an award of preliminary relief is not a final ruling on the merits. A party "is not required to prove his case in full at a preliminary-injunction hearing," and "the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *see also Community Nutrition Inst. v. Block*, 749 F.2d 50, 56 (D.C. Cir. 1984) (Scalia, J.) (noting that a court's "tentative assessment made to support the issuance of a preliminary injunction pending resolution of the issue" is "not a final determination" of that issue and "is not even law of the case").

Requiring the district court to make a preliminary finding of a likelihood of success on the merits prior to ordering the alteration of the State's

maps is thus consistent with this Court's precedent, and does not intrude upon the D.C. court's exclusive jurisdiction to enter final rulings on preclearance claims. In assessing whether to enter preliminary equitable relief, district courts routinely make preliminary findings before engaging in a full assessment of the merits—indeed, they are *required* to do so. *See Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). There is no reason why interim redistricting plans—which are temporary equitable remedies that apply only for a single election cycle—should be treated any differently.

2. Requiring the district court to ground any alterations of the State's plan on a likelihood of success on the merits also serves the vital and constitutionally necessary role of ensuring that race is taken into account no more than necessary to remedy likely violations of law. As Texas explained, any race-conscious remedy—such as the creation of "minority opportunity districts" or "coalition districts"—must be narrowly tailored to remedying actual, proven racial discrimination. *See* Texas Br. 45–46; *Shaw v. Reno*, 509 U.S. 630, 643 (1993). Those constitutional principles are fully applicable to judicially drawn maps or maps drawn in response to a court order. *See Miller*, 515 U.S. at 920–23.

This Court has emphasized that "compliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws." *Miller*, 515 U.S. at 921; *see also id.* (noting that compliance with the VRA cannot justify race-based districts where those districts were "not required by the Act"). Thus,

using race to draw interim maps that merely further the general ends of the VRA or "avoid" *alleged* statutory violations is not only unjustified or unwise, but unconstitutional. To the extent race-based districts are *ever* permissible, it can only be to remedy actual or likely violations of the VRA or the Constitution. There can surely be no compelling justification for a race-based remedy when the district court expressly *refuses* to make any such finding. Application of settled equitable principles to judicially drawn interim maps thus ensures that considerations of race will be limited to those few situations in which race-based remedies are constitutionally permissible.

D. The Fact That a Judicially Drawn Plan is "Interim" Does Not Alter Basic Principles Governing Equitable Relief

Some, but not all, of the Appellees attempt to defend the Texas court's conclusion that, because its maps were "interim" rather than "remedial," the court was freed from customary principles of equitable relief and could instead draw "independent" maps. *See* JA 96–99, 181; NAACP Br. 7, 20–21. That is clearly mistaken. Interim maps are "interim" in the sense that they govern only a single election; they do not in any way obviate the need for a covered jurisdiction to pursue preclearance. But interim remedial orders remain remedial orders, subject to the settled principles that govern equitable relief. *See* Texas Br. 40–46. The district court clearly erred in concluding otherwise.

An "interim" order is simply one type of "remedial" order, and is subject to the normal rules

that govern all such orders. This Court has referred to such orders as an "interim remedy," *see Chapman*, 420 U.S. at 18, without suggesting that the term was an oxymoron. Interim remedial orders are distinct because of their short duration, not because they are governed by wholly different principles. The district court's "interim" orders are analytically identical to other interim equitable remedies, such as *preliminary* injunctions, *temporary* restraining orders, and stay orders *pending appeal*. All of these remedies are "interim," yet all remain bound by longstanding principles of equitable relief—such as the requirements that the court find a likelihood of success on the merits and narrowly tailor any interim relief to the harm sought to be averted. *See, e.g.*, *Winter*, 555 U.S. at 20; *Nken v. Holder*, 129 S. Ct. 1749, 1756 (2009). As *Upham* makes clear, those principles apply with full force to interim relief in cases involving jurisdictions covered by Section 5. *See Upham*, 456 U.S. at 43 (holding that "the district court's modifications of a state plan" must be "limited to those necessary to cure any constitutional or statutory defect").

In that regard, it is important to distinguish between the "interim" maps here, and situations where legislative gridlock has prevented the political process from producing any legislative map at all. In the latter situation, there is no legislative map to which to defer, and courts must draw a map knowing it will govern until the stalemate ends. *See Chapman*, 420 U.S. at 19 (noting that, for court-ordered plans, "there often is no state policy . . . which might deserve respect or deference"). That is not the circumstance here. Texas' political process

produced maps, and Texas has actively sought preclearance. If preclearance is forthcoming, those maps will take effect. If preclearance is denied, there is no obvious obstacle to the legislature producing new maps. Thus, the interim maps are truly *interim* remedies, and there is no reason not to use the legislative maps as the starting point and modify them only to the extent consistent with traditional equitable principles.

E. Use of the Legislatively Enacted Plan on an Emergency Interim Basis Would Not Require Preclearance

Appellees further contend that if the Texas court had ordered the legislatively enacted plan to be used as the interim plan—or had granted any deference to the political goals embodied in that plan—then that ruling would itself have been subject to the preclearance requirement. *See* Davis Br. 33–34; Rodriguez Br. 38–39; Task Force Br. 45; United States Br. 18–20. That mistake is at the heart of the Texas court's erroneous maps. The Texas court did not just fail to give the legislative maps sufficient deference, it affirmatively believed that Section 5 compelled it to give zero deference to the unprecleared map, lest its own maps reflect the political position of Texas and require preclearance. Section 5 does not compel such a curious result.

Appellees' position makes no sense as either a practical or doctrinal matter. As a practical matter, the need for an interim plan arises only when the preclearance process is taking too long, so it would

make no sense to require an interim plan to be submitted for preclearance as well.[16]

That position is also contrary to DOJ's own regulations implementing the VRA, which contemplate that "[a] Federal court" may authorize "the emergency *interim* use without preclearance of a voting change." 28 C.F.R. § 51.18(d) (emphasis added). This regulation makes perfect sense, as it recognizes that using an unprecleared voting change on an interim basis neither requires preclearance nor obviates the need for preclearance.

The United States attempts to discount the force of its own regulation, arguing that this provision "does not come into play because [Texas] did not succeed in asking the court below to exempt their map from preclearance." United States Br. 28. But Texas did not need to seek an "exemption" for the court's interim map because it was not subject to preclearance in the first place. The regulation does not speak in terms of exemptions, but rather assumes that "Federal court[s]" may authorize the use of an unprecleared change on an interim basis. And, even under the government's interpretation, this Court could remand to the district court with instructions to order the emergency interim use of the legislatively enacted plan, as Texas has requested. *See* Texas Br. 54–55.

The United States also asserts that there is no "emergency" because it was "entirely foreseeable"

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[16] Would the district court then need to devise an interim-interim plan while preclearance of the interim plan is pending?

that the preclearance proceeding would not be completed in time for Texas' 2012 election cycle. United States Br. 29. But the United States has previously emphasized to this Court that "emergencies" include *any* "condition of urgent need for action or assistance," even if the urgency was foreseeable.[17] For example, "[i]f a cardiac patient fails to take his heart medicine," the resulting medical crisis "is no less an 'emergency' requiring immediate attention simply because it was foreseeable or the patient may have contributed to its cause." *Id.* Here, since election cycles are relatively predictable but the pace of preclearance is unpredictable, it is hard to see how this is anything but a paradigmatic emergency situation covered by the regulation.

Finally, while the possibility that some interim relief might become necessary was foreseeable, the Texas court's radical departure from ordinary equitable principles was not. And that departure is what creates the exigency now. Had the district court entered interim orders that gave due deference to the State's legislatively enacted maps and followed longstanding principles governing equitable remedies, there would have been no need for "emergency" relief, from this Court or otherwise. It is the need to correct those errors, combined with the

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[17] *See* Br. for United States at 24–25, *Winter v. Natural Res. Def. Council*, No. 07-1239 (filed Aug. 7, 2008) (addressing the meaning of "emergency" under regulations authorizing alternative arrangements to compliance with the National Environmental Policy Act).

rapidly approaching (and already-delayed) primary elections, that gives rise to the exigency.

F. Texas' Position Does Not Undermine Section 5 or Distort the Incentives of Covered Jurisdictions

Finally, Appellees are wrong to suggest that Texas is seeking to have its plan "rubber-stamped," and their rhetoric about "writ[ing] Section 5 out of the U.S. Code," is overblown. *See* Rodriguez Br. 23; Davis Br. 33–34; NAACP Br. 24. Texas has never disputed that a narrowly tailored alteration of its plans would be appropriate if and when there is some legitimate finding of a likely violation of law. Nor has Texas disputed that its plan is subject to the preclearance requirement, and that it must obtain preclearance from the D.C. court before implementing its legislatively enacted maps on a permanent basis. But, absent some finding that its enacted plan is likely to violate federal law, there is no basis for a district court to draw an entirely "independent" map based on the court's own conception of "the collective public good." JA 170.

The United States is similarly wrong to suggest that Texas' position would "fundamentally distort the incentive structure of Section 5" by diminishing covered jurisdictions' "incentive to cooperate with the preclearance process and bring it to prompt resolution." United States Br. 22–23. Indeed, the United States has it exactly backwards. No sovereign State would lightly decide to drag out the preclearance process while its duly-enacted map remains suspended so that it could try its luck at getting a three-judge court to issue a favorable

interim map for one election cycle. The continuing need for preclearance and the ability of the D.C. court to sanction dilatory tactics are ample incentives for States to seek a prompt decision.

By contrast, if opponents of a legislative map can procure an interim map drawn to "avoid' their far-reaching allegations just by intervening before the preclearance court and taking their time, then the prospects for gamesmanship are nearly unlimited. Those incentives are magnified further if the interim map becomes the new benchmark.[18] The Court has appropriately taken such incentives into account in fashioning its redistricting jurisprudence. *See, e.g., LULAC*, 548 U.S. at 420 (rejecting a test that would give "opposition legislators . . . every

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[18] As Texas explained, once Appellees obtain a favorable interim map, they are likely to argue that the purportedly "interim" map should be used as the benchmark for evaluating future electoral changes. *See* Texas Br. 47–48. This scenario was not at all hypothetical, as it is precisely the position that both Appellees *and* DOJ took before the D.C. court. *See* United States and Intervenors' Motion to Hold Case in Abeyance at 2 (Doc. 108), No. 1:11-cv-1303 (D.D.C. Nov. 22, 2011) (arguing that "the [Texas] court's new interim redistricting plans for the House, Senate, and Congress become the new benchmark for comparison in determining whether the legislature's three redistricting plans are retrogressive"). Without even acknowledging its prior position before the D.C. court, DOJ has now made a complete about-face, asserting that the interim orders would *not* "become the benchmark for Section 5 purposes." United States Br. 26–27. While Texas welcomes DOJ's change in position, that hardly prevents Appellees from continuing to insist that the interim plans should become the new benchmark.

incentive to prevent passage of a legislative plan and try their luck with a court that might give them a better deal").

Importantly, it is Appellees, not Texas, that assert that normal equitable principles do not constrain the interim maps. If the district court finds that some aspect of the State's plan is likely to violate federal law, then this defect will be addressed through a narrowly tailored "interim" electoral plan that will apply while preclearance is pending. If no such finding is made, then there is little risk of harm to Appellees (and the United States) if the State's enacted plan is used as the interim plan. Either way, the State will continue to have every incentive to obtain an expeditious determination on preclearance so that it may implement its plan on a permanent basis.

If any argument in this case is "extreme," NAACP Br. 24, or "absurd," Rodriguez Br. 28, it is Appellees' argument (fully endorsed by the Texas court) that a district court has carte blanche to rewrite a duly enacted state law—and order elections to be conducted under that judicially drawn map—solely because the preclearance process is taking too long, without any finding that those alterations are necessary to remedy a likely violation of law and narrowly tailored to do so. If that is really what Section 5 requires, then the doubts about its constitutionality are even graver than this Court feared in *Northwest Austin*.

III. IF THIS COURT REMANDS, IT SHOULD CORRECT THE MOST EGREGIOUS ERRORS IN THE DISTRICT COURT'S INTERIM MAPS

Given the need for certainty in light of the rapidly approaching (and already delayed) primary elections and the district court's refusal to find any probable statutory or constitutional violation in the legislative plans, the most appropriate course at this juncture is for this Court to vacate the interim orders and remand with instructions to order the interim use of the State's legislatively enacted plan while preclearance is pending. *See* Texas Br. 54–55. Even though Texas has faced a host of claims in two different venues for more than six months, there has been no finding by any court that a single aspect of Texas' enacted plans is likely to violate federal law. Particularly in light of the district court's profound misunderstanding of the governing legal standards, an open-ended remand would only result in additional delay, leading to further chaos in the 2012 election cycle.

If the Court nonetheless opts to remand to allow the Texas court to impose new interim maps, it should provide substantial guidance regarding the legal standards to be employed in the court's likelihood-of-success inquiry. *See* JA 159–64 (Judge Smith listing four legal issues "most begging for resolution or explication" by the Supreme Court). That guidance should begin with the correction of several discrete errors in the challenged orders. These errors were intimately related to the Texas court's failure to defer to the duly-enacted maps. Indeed, these erroneous legal assumptions amount

to a recipe for ignoring the legislative maps and forcing courts to draw wholly "independent" maps.[19] Thus, if the Court remands, it should provide additional guidance to ensure the district court does not repeat its errors.

A. The District Court Was Not Permitted to Equalize Population Across Districts

Appellees argue that the district court's interim plan for the Texas House appropriately reduced population deviations across districts to *de minimis* levels. *See* NAACP Br. 18–20; Task Force Br. 48; JA 170–72. But by contending that all judicial maps, including interims ones, must apply a much more stringent standard of population deviations than legislatures need apply, Appellees would make it impossible for a court to defer to a legislative map in

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[19] While Appellees seek to downplay the extent of the district court's redrawing of Texas' maps, there can be no real dispute that the changes were significant. For example, the Rodriguez Appellees cite a limited number of districts in which there is substantial (but not complete) overlap between the State's congressional plan and the district court's interim plan. *See* Rodriguez Br. 40–41. But that same report demonstrates the true extent of the district court's modification of the State's plan. In particular, in congressional districts 10, 12, 20, 21, 23, 25, and 35, the population overlap between the interim plan and the enacted plan is 43.3%, 45.0%, 50.9%, 59.9%, 49.4%, 25.6%, and 35.7%, respectively. *See* MJA 22–24. Any suggestion that the district court "gave as much consideration to the State's enacted map as possible," JA 90, does not withstand scrutiny. In any event, given Appellees' broader position, it is not clear why they find the Texas court's purported effort to give the legislatively enacted maps as much consideration as possible to be laudable or even permissible.

fashioning an interim map. In other words, Appellees' view would require a court to adjust *perfectly lawful* population deviations in a legislative map.

Nothing in this Court's precedents supports this recipe for judicial rewriting of legislative maps. To be sure, this Court has suggested that a district court must apply a stricter standard for population deviations when the State's political process has deadlocked and the court is forced to issue its own map to remedy a one-person-one-vote violation, with no legislative map to which to defer. *See, e.g.*, *Chapman*, 420 U.S. at 26. But this Court has not suggested that the same principles would govern interim relief when the legislature has drawn a map with presumptively acceptable population deviations, and the only reason for interim relief is delay in the preclearance process. In that context, both common sense and the general presumption of good faith require courts to apply the more forgiving standard for legislative maps, and to modify the maps only if there is a likely violation of those standards. This Court has held that "an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations" that are presumptively reasonable. *Brown v. Thompson*, 462 U.S. 835, 842 (1983). Applying that standard, there was no basis for the district court to modify Texas' legislative maps solely to equalize population across districts.

Cox v. Larios, 542 U.S. 947 (2004), is not to the contrary. That case stands for the unremarkable proposition that even in those plans in which there are minor population deviations—*i.e.*, under 10%

total deviation—a plaintiff can rebut the presumption that such a plan is constitutional. *See Larios v. Cox*, 300 F. Supp. 2d. 1320, 1341 (N.D. Ga. 2004) (holding that where legislative plans' total population deviation was under 10% the plans were "presumptively constitutional, and the burden [fell] on the plaintiffs to rebut that presumption.").[20] Thus, in litigating their Section 2 claims, Appellees could attempt to rebut the presumption that the legislatively enacted plan comports with one-person, one-vote principles. But, absent a finding of a likely violation, there is no basis for rewriting the legislative maps to reduce the already *de minimis* variations even further solely to comply with the more stringent standard for judicial maps that remedy one-person-one-vote violations when the political process has deadlocked.

B. The District Court Was Not Permitted To Adjust the Legislatively Enacted Map to Maintain Voter Tabulation Districts

Appellees contend that the administrative difficulties of drawing new lines for Voter Tabulation Districts ("VTDs")—*i.e.*, voting precincts—compelled the district court to fashion the interim maps as it did. *See* Rodriguez Br. 39–40; NAACP Br. 12–13; *see also* JA 102–03 (district court "endeavored to avoid as many VTD cuts as possible" in the interim maps).

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[20] *See also Moore v. Itawamba Cnty.*, 431 F.3d 257, 259 (5th Cir. 2005) ("Population deviation less than ten percent . . . is not *per se* nondiscriminatory and is not an absolute bar to a claim of vote dilution.").

But this is yet another recipe for refusing to defer to legislative maps. Legislatures have every right to redraw precinct boundaries and create new VTDs accordingly. Texas election law specifically provides for the redrawing of county precinct boundaries to give effect to a redistricting plan. *See* Tex. Election Code Ann. § 42.032 (West 2011) (providing that, if "changes in county election precinct boundaries are necessary to give effect to a redistricting plan," then the county commissioners courts "shall order" those changes).

There is nothing sacrosanct about existing VTDs or anything inherently problematic about altering them. And the Texas court certainly did not find that the Texas legislature violated any provision of the VRA by splitting VTDs. In acting to preserve existing VTDs without a finding of any likely statutory or constitutional violation, the Texas court got things exactly backwards—instead of deferring to the legislature's new *maps*, it deferred to pre-existing VTDs.

In support of their position, Appellees rely on this Court's opinion in *Bush v. Vera*, 517 U.S. 952 (1996), and the lower court decisions in that case, *Vera v. Richards*, 861 F. Supp. 1304 (S.D. Tex. 1994), and *Vera v. Bush*, 933 F. Supp. 1341 (S.D. Tex. 1996). Far from supporting the district court's actions in this case, the *Vera* decisions simply hold that where districts are "formed in utter disregard for traditional redistricting criteria" and such districts "are ultimately unexplainable on grounds other than the racial quotas established for those districts," a court is justified in holding that "they are the product of [presumptively] unconstitutional

racial gerrymandering." 517 U.S. at 976 (quoting *Richards*, 861 F. Supp. at 1341). In *Vera*, the numerous split VTDs in the State's plan—plus many other factors raising red flags—provided evidence of an unlawful motivation in enacting redistricting plan. *See id.* at 974–75. But nothing in that decision suggests that a district court *must* avoid splitting VTDs whenever it imposes an interim map. To do so would make it impossible for a court to defer to the legislatively enacted plan, despite this Court's clear instruction to do just that absent a showing of a likely violation.

C. The District Court's Interim Maps Reflect an Impermissible Focus on Race and Proportionality

The Texas court clearly took race into account in drawing its interim maps. *See* Texas Br. 45–46, 56–57. In particular, the Texas court seemed to believe that it was required to add minority opportunity districts to the congressional and state house plans in proportion to each racial group's share of population growth. *See* JA 146–47 (adding new "minority coalition opportunity district" in Dallas-Fort Worth because much of the population growth in that area was "attributable to minorities"); JA 150 & n.32 (new minority coalition district in Tarrant County was "based on the significant minority population growth occurring in the area"). Appellees continue to press this argument, asserting that the creation of additional minority opportunity districts was necessary in order to "reflect the substantial population growth" of minority groups. Task Force Br. 49–52; *see* NAACP Br. 25–28. This argument is

mistaken, and even DOJ has found this aspect of the plans problematic.

The VRA explicitly rejects any right to proportional representation. *See* 42 U.S.C. § 1973(b); Texas Br. 56–57. And this Court has made clear that a State's failure to *maximize* minority voting strength does not violate the VRA. *See Johnson v. DeGrandy*, 512 U.S. 997, 1017 (1994); *see also Abrams*, 521 U.S. at 97–98.

As the United States concedes, the district court's opinion is in tension with these principles. For example, the government notes that "the district court appears to have concluded that Section 5 required at least two of Texas' four new [congressional] seats to be ability-to-elect districts," and that the court's rationale for creating these new districts was "inadequate." United States Br. 31. Similarly, with respect to the Texas House map, the United States notes that the district court failed adequately to justify its decision both to maintain the 50 minority districts from the benchmark plan *and* to create three new ability-to-elect districts. *Id.* at 30–31. The need to avoid "retrogression" in minority voting strength cannot possibly justify the creation of *additional* minority districts compared to the benchmark plan. Indeed, drawing additional minority districts based on race that are not required by the VRA would have violated the Equal Protection Clause if Texas had done it. *See Miller*, 515 U.S. at 921 (noting that compliance with the VRA cannot justify race-based districts where those districts were "not required by the Act").

If this Court remands for further proceedings, it should instruct the Texas court that it is not permitted to make any alterations to Texas' legislatively enacted maps based on concerns about proportional representation or maximization of minority voting strength. Of course, as noted above, *see supra* 28–29, the best way to ensure that the Texas court does not unduly consider racial factors is to reinforce that traditional equitable principles are fully applicable to "interim" remedial orders. Absent a showing that a judicial modification is necessary to remedy a likely statutory or constitutional violation, race need not—indeed, cannot—be taken into account.

D. The District Court Did Not Adequately Justify Creation of Multiple Coalition Districts

In addition to its improper pursuit of proportionality, the district court's interim maps created several race-based "coalition" districts. Appellees attempt to defend these districts on the ground that "what the court below did was simply refrain from intentionally dismantling naturally arising coalition districts." NAACP Br. 28; *see* Rodriguez Br. 46. But, as Judge Smith explained, that contention is not plausible. For example, the new coalition districts created in the district court's interim House plan were substantially reconfigured from the benchmark plan in order to "exclude Anglo voters and include minority voters." JA 129; *see also id.* (noting that two other coalition districts were created "by removing almost exclusively white populations instead of reducing the population in a

race-neutral manner"). These districts were made, not found.

Assuming that the VRA could ever require the creation of coalition districts—which it does not, *see* Texas Br. 58–59 & n.11—Appellees would have to make some showing of political cohesion between the minority groups comprising the "coalition." *See Thornburg v. Gingles*, 478 U.S. 30, 51 (1986). As the government concedes, the district court made no such findings here, and thus its "analysis was inadequate" to justify the creation of such districts. *See* United States Br. 33 (noting that "the district court made no findings establishing that the conditions for treating minorities as a single coalition have been met"). Indeed, Appellees' own evidence showed that African-American, Asian, and Latino citizens *do not* vote as a cohesive bloc. *See* Texas Br. 58–59 & n.12.

Moreover, whatever role coalition districts might play in a judicial map necessitated by a legislative deadlock, they should play no role in interim maps like the ones at issue here. The exigent circumstances that give rise to this kind of interim map, and the assurance that it will govern for one election cycle only, should make courts extremely wary of embarking on an enterprise as fraught with constitutional difficulties as this. It was clear error for the district court to create multiple coalition districts in the interim districting plans.

IV. APPELLEES' ARGUMENTS ABOUT THE MERITS OF THEIR CLAIMS ARE NOT PROPERLY PRESENTED HERE AND, IN ANY EVENT, ARE MERITLESS

A. The Merits of Appellees' Claims Are Not At Issue before this Court

The district court expressly declined to base its significant alterations of Texas' legislatively enacted electoral maps on any finding that those maps violated, or were likely to violate, the VRA or the Constitution. *See* JA 93–94, 167, 169. Nonetheless, Appellees spend substantial portions of their briefs before this Court arguing the merits of their various challenges to Texas' plans. *See* Task Force Br. 8–19; Rodriguez Br. 3–16; NAACP Br. 2–3; Davis Br. 4–13. Texas, of course, has vigorously disputed each of the Appellees' allegations.

Indeed, the great irony of Appellees' presentation is that their view of the appropriate standard for interim maps renders their extensive discussion of the merits utterly irrelevant. *See* NAACP Br. 21 (describing merits as "irrelevant"). In Appellees' view, a district court has the same unbounded discretion to draw an independent map whether the unprecleared map is fraught with difficulty or a paradigm of fairness. Texas, by contrast, contends that the extent of the legislative map's compliance with the VRA and Constitution are highly relevant: the legislative maps should be modified in the interim maps to the extent necessary to address likely statutory or constitutional violations, but only to that extent.

B. Appellees' Claims Fail on the Merits

Despite their enthusiasm for pressing the merits of claims the Texas court refused to reach, Appellees conspicuously avoid the question at the heart of their Section 2 claims—whether voting patterns in Texas are caused by racial bias or political preference. In fact, Appellees' own experts found that voting patterns in Texas general elections are determined by partisan preferences, *not* racial considerations. Appellees' Section 2 claims thus fail as a matter of law and cannot form the basis of any interim alterations to the legislatively enacted maps.

To prove vote dilution under Section 2, a plaintiff must prove, among other elements, racial bloc voting. *See, e.g., Gingles*, 478 U.S. at 50–51. Racial bloc voting exists where "racial politics . . . dominate the electoral process" or "race is the predominant determinant of political preference." S. Rep. 97-417 at 28, *reprinted in* 1982 U.S.C.C.A.N. 177, 211 (1982). When voting preferences are determined by race, and where minority voters are outnumbered by a cohesive majority, a voting standard may "result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). To prevail on a Section 2 vote-dilution claim, a plaintiff must accordingly prove that voting patterns are *caused* by racial considerations.[21]

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[21] *See, e.g., LULAC v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (en banc) ("Unless the tendency among minorities and whites to support different candidates, and the accompanying losses by minority groups at the polls, are somehow tied to race,

Expert testimony at trial before the Texas court proved beyond question that partisan preference, not race, is the predominant factor in Texas general elections. The experts found that Anglo voters support Republican candidates at essentially the same rate regardless of the candidate's race. Conversely, the experts agreed that Latino voters support Democratic candidates at the same rate regardless of race, even when Anglo Democrats face Latino Republicans. *See, e.g.*, Trial Exh. E-2, Report of J. Morgan Kousser, at 1 ("Latino voters in Texas overwhelmingly favor Democratic nominees, even when Republican nominees have Spanish surnames.").

In other words, however one looks at the data, one thing is clear: Texas voters do not base their electoral decisions upon a candidate's race; voters base their decisions on a candidate's political party. *See, e.g.*, Trial Tr. at 1790:22–25 (Testimony of John Alford) ("where there's a choice between partisanship and race or ethnicity, there simply isn't any discernible impact left for ethnicity in general election voting."); *see generally* Defendants' Response to Plaintiffs' Post-Trial Briefs [Doc. 457] at 7–9, *Perez v. Perry* (W.D. Tex. Oct. 21, 2011) (citing

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. . . plaintiffs' attempt to establish legally significant white bloc voting, and thus their vote dilution claim under § 2, must fail."); *see also Uno v. City of Holyoke*, 72 F.3d 973, 980–81 (1st Cir. 1995); *Nipper v. Smith*, 39 F.3d 1494, 1524–26 (11th Cir. 1994) (en banc); *cf. United States v. Charleston County*, 365 F.3d 341, 347–48 (4th Cir. 2004) (holding that the cause of racially polarized voting is relevant to the totality-of-circumstances inquiry).

testimony of Plaintiffs' experts). Because the expert testimony uniformly undermined Appellees' Section 2 claims, those claims have no likelihood of success and cannot form the basis for deviations from the legislatively enacted maps.

While Appellees' failure to demonstrate racially polarized voting dooms their Section 2 claims as a matter of law, their claims of intentional discrimination are likewise unsupported by the record.

1. Congressional Plan

Based on the unusual shapes of congressional Districts 12 and 26, Appellees contend that the legislature intentionally sought to break up minority groups to prevent them from forming effective coalitions. Rodriguez Br. 11–13. But Appellees entirely ignore the fact that the unusual shape of these districts mirrors a similar feature in the benchmark plan. MJA 1, 3. Appellees also ignore testimony from Texas' cartographer that his goal was to capture Democrat-leaning areas while *maintaining* minority communities of interest. *See* 2SJA 30–36. When drawing District 26, race was only considered in the course of resolving complaints that certain segments of the Hispanic population had been split. *See id.*

Appellees further assert that the legislature's congressional plan "gerrymandered [District] 23 to leave it a nominal Latino opportunity district while ensuring that it would almost never elect the Latino preferred candidate." Rodriguez Br. 6; Task Force Br. 15–17. To the contrary, the legislature's goal in drawing the new District 23 was to protect the

Republican incumbent—Congressman Francisco "Quico" Canseco, who is Latino—while also maintaining the district's minority population to avoid a VRA challenge.

Appellees' attempt to compare the new District 23 with the district found unlawful in *LULAC v. Perry*, 548 U.S. 399 (2006), lacks any basis in fact. The plan at issue in *LULAC* reduced the Hispanic Citizen Voting Age Population and Spanish Surname Voter Registration of District 23 by more than ten percentage points, bringing both below fifty percent. *See* 2SJA 51. A federal court redrew District 23 in 2006 as a Latino opportunity district, bringing both numbers back above fifty percent. The legislatively enacted plan *increases* District 23's Hispanic Citizen Voting Age Population and Spanish Surname Voter Registration percentages compared to the benchmark. *See id.*[22]

The Rodriguez Appellees further contend that the State's plan "break[s] apart" District 25, which they describe as a crossover district in which minority voters were able to elect their candidates of choice. This Court has suggested that a State's intentionally discriminatory disruption of an effective crossover district would implicate the Fourteenth Amendment. *See Bartlett v. Strickland,*

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[22] The court's interim plan, by contrast, actually reduces District 23's Hispanic Citizen Voting Age Population from its benchmark level. *See* Texas Legislative Council, Hispanic Population Profile (RED 109), Congressional Plans--Plan C220, *available at* http://www.tlc.state.tx.us/redist/pdf/congress/PlanC220_Report_Package_Expanded.pdf.

129 S. Ct. 1231, 1249 (2009). But that was not the legislature's purpose here. The legislature's goal was to oust an incumbent congressman who, in the months leading up to the 2011 legislative session, had championed federal legislation that had the effect of temporarily depriving the State's financially strapped government of more than $800 million in education funding. *See* 2SJA 46. Of course, political motivations for a districting decision are entirely permissible. *See, e.g.*, *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999) ("[A] jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact."). Moreover, District 25 is not a crossover (or coalition) district because there is racially polarized voting in Democratic primaries. *See* Trial Tr. at 265:15–18 (plaintiffs' expert Dr. Morgan Kousser stating Latinos and African Americans are not cohesive in the Democratic primary elections); *id.* at 506:3–508:5 (plaintiffs' expert Dr. Richard Engstrom stating African-Americans are the "least likely group to support Latinos in a Democratic primary").[23]

Appellees assert that the legislature "drastically redrew [District] 27 in a way that diminished Latino

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[23] *See also Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 421 (S.D.N.Y. 2004), *aff'd* 543 U.S. 997 (2004) (noting that where "the two minority groups are generally affiliated/registered with the same party (Democratic) and vote for that party's candidates at high rates, primary elections for that party's candidate are by far the most probative evidence of cohesion").

voting strength." Task Force Br. at 17–19. But the new contours of that district reflect nothing more than the legislature's concerted effort to accommodate the requests of public officials in Nueces and Cameron Counties. Nueces County officials had asked for their county to serve as the anchor for its own congressional district. *See* Trial Tr. 1461:25-1462:7. Similarly, Latino Democrat legislators in South Texas had requested that Nueces and Cameron Counties be placed in separate congressional districts. *Id.* at 1022:17–18. The legislature's decision to accommodate those requests was entirely race-neutral. Appellees also fail to mention that District 34, a newly created congressional district, is a Latino opportunity district that closely resembles the former District 27. *See* MJA 1, 3.

2. State House Plan

The Task Force contends that the State's plan improperly eliminated House District 33, which was a majority-Latino district in Nueces County. Task Force Br. 10, 49. But population demographics required the legislature to reduce the number of House districts in the Nueces County from three to two. Because Nueces County's total Spanish Surname Voter Registration was only 49.5%, it was impossible to draw both of those districts as majority-minority districts. *See* Trial Tr. at 1449:19–23. The alternative plans offered by Appellees could not create an additional Latino opportunity district without violating Texas' county-line rule, which would have implicated the Fourteenth Amendment by elevating racial considerations above traditional redistricting

principles. *See id.* at 1987:12–16; *Shaw*, 509 U.S. at 646–47.

Appellees also criticize the contours of District 117 in the new Texas House plan. *See* Task Force Br. 11, 49. But even Appellees concede that this district was drawn to protect the incumbent.[24] *Id.* Moreover, District 117, which is located in Bexar County, was part of a county-wide plan approved and submitted by the Bexar County delegation, which includes seven Latino representatives (out of ten total). *See* 2SJA 48–49.

Finally, Appellees contend that the new District 144 violates Section 2 because the legislature reconfigured and underpopulated the district to prevent its emergence as a Latino opportunity district. *See* Task Force Br. 11. Appellees, however, ignore the fact that this district did not have a majority Hispanic Citizen Voting Age Population and, in any event, was not a "performing" district under the benchmark plan. *See* JA 199, 610–11. Moreover, Appellees fail to mention the D.C. court's ruling, which held that there is no obligation under the VRA to protect "emerging" districts. *See* Task Force Addendum 42A ("[T]his Court finds that evidence of preventing an emerging ability to elect from crystallizing will not support the contention that a plan has an impermissible retrogressive effect

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[24] Appellees assert, with no apparent irony, that the current representative for District 117—who is Latino—"is not the Latino-preferred candidate." Task Force Br. 49. "It is a sordid business, this divvying us up by race." *LULAC*, 548 U.S. at 511 (Roberts, C.J., concurring in part and dissenting in part).

under Section 5."). There was accordingly no basis to claim retrogression or vote dilution.

3. State Senate Plan

DOJ raised no objection to the legislatively enacted state senate plan in the preclearance proceeding in D.C. court. *See* JA 407. That plan was nonetheless challenged by Wendy Davis—the incumbent senator from District 10, and one of only two senators to vote against the State's plan—and LULAC, who contend that the State's plan impermissibly "dismantled" District 10. But the fatal flaw in this argument is that District 10 was never entitled to protection under the VRA.

In fact, District 10 was not a "coalition district" at all. The combined Black and Hispanic Citizen Voting Age Population in benchmark District 10 was only 33.4%. JA 441–42. In 2008, District 10 happened to elect a Democrat by a narrow margin in an unusually good year for Democrats. The legislature's decision to redraw District 10 in a way that reduces the incumbent Anglo Democrat's chances at reelection had nothing to do with race and has no VRA implications. DOJ agrees, and one disgruntled state senator's mere *allegations* should not be allowed to block implementation of the State's duly enacted redistricting plan.

CONCLUSION

Although the parties start with some common premises, such as the continuing need for preclearance and the necessity of some "interim" map, they could hardly be farther apart when it comes to a district court's role in imposing such

"interim" maps. Appellees view the district court's role as no different from the unwelcome task of redistricting when the legislature has deadlocked and failed to produce *any* map to which a court could defer. In their view, not only can the court not use the duly-enacted plan as a starting point, but any deference to the political judgments therein would trigger a preclearance obligation for the judicial map. And the court must ignore the legislative map and draw its own map, subject to the heightened standard for population deviations that govern judicial maps drawn after deadlock.

Texas, by contrast, suggests that courts should not shoulder the unwelcome burden of drawing an independent map needlessly. Consistent with this Court's repeated emphasis that "reapportionment is primarily the duty and responsibility of the State through its legislative body, rather than of a federal court," *Chapman*, 420 U.S. at 27, Texas respectfully submits that a court should defer to the legislative map unless "necessary to cure any constitutional or statutory defect," *Upham*, 456 U.S. at 40–41.

The United States suggests that, given a choice between a concededly flawed judicial map and allowing a duly-enacted legislative map to serve as the interim map pending ongoing preclearance proceedings, it would choose the former. *See* United States Br. 33–34. Texas begs to differ. In a world where redistricting is primarily the duty and responsibility of the legislature and remedying likely or actual violations of federal law is primarily the duty and responsibility of the judiciary, the choice is clear: an independent judicial map that gives no

deference to the duly-enacted legislative map cannot be allowed to stand.

* * *

The district court's interim orders should be vacated, and the case remanded with instructions that the district court order the use of Texas' legislatively enacted districting maps as the interim plans while preclearance is pending.

Respectfully submitted,

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January 3, 2011

REPLY BRIEF

Nos. 11-713, 11-714, 11-715

IN THE

Supreme Court of the United States

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.

Appellants,

v.

SHANNON PEREZ, ET AL.

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.

Appellants,

v.

WENDY DAVIS, ET AL.

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.

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Appellees.

On Appeal from the United States District Court for the Western District of Texas

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I

INTRODUCTION

As has become clear from the parties' opening briefs, the dispute before the Court is quite narrow. The State concedes that it is required under Section 5 of the Voting Rights Act to obtain preclearance of any redistricting plan before it goes into effect. State Br. 2. The State likewise concedes that it is "customary practice" under the Voting Rights Act for a court hearing Section 2 and constitutional challenges to a redistricting plan to "refrain from awarding relief while the preclearance litigation" remains pending. *Id.* Finally, the State concedes that the three-judge panel was required to implement interim redistricting plans given the impending election schedule, *id.* at 27, and, moreover, the State does not dispute that the panel acted properly in departing from the enacted maps in order to avoid any likely violation of law, *id.* Given these concessions, the *only* issues in this appeal are (1) whether that three-judge panel was required to defer to the State's enacted redistricting plans and depart from those plans only after making findings that they likely would violate the law; and (2) whether the panel's interim plans should remain in place for the rapidly approaching Texas primary elections.

As to the first question, in drawing the interim redistricting plans, the panel below followed a sensible approach, relying in part on the existing "benchmark" districts that were precleared a decade ago, but also deferring to the newly enacted districts where it could, without prematurely and improperly

addressing the merits of the statutory and constitutional challenges to the newly enacted districts that are still pending before the courts in both the District of Columbia and Texas. That approach was entirely consistent with this Court's precedent. The State's alternative approach – starting with the enacted districts in all instances and making specific findings and conclusions about the legality of those unprecleared districts – would have been not only improper (because it would have required the panel to make findings that were either unripe or outside of its jurisdiction), but also impractical.

As to the second question, it has become even more obvious in the time since the opening briefs were filed that the Texas court's interim redistricting plans are the only viable plans that can be used for the impending elections, unless there is to be considerable delay in the election schedule. In a memorandum opinion issued just days ago, the District Court for the District of Columbia set forth its reasons for denying summary judgment to the State. In so doing, it made clear that the State faces an uphill battle to obtain preclearance of its redistricting plans, which would then also face substantial challenges under Section 2 of the Voting Rights Act and under the Equal Protection Clause in the Texas District Court. These realities are an insuperable legal barrier to the State's request for permission to use the enacted plans this year.

Even leaving aside the legal barrier, the State's argument that "this Court should order [the

legislatively enacted] plans to go into effect on an immediate, interim basis," State Br. 55, makes little practical sense. Because of the number of precinct changes required by the State's enacted maps – precinct changes that have not been made, let alone precleared – it would now take months to prepare to hold primary elections using the enacted maps. By contrast, the interim maps have been designed to avoid precinct changes wherever possible. In order to switch to the enacted maps at this late stage, the State would have to delay the primaries even more than they have already been delayed. That would make no sense at all. The better course, if this Court decides to vacate the court-ordered interim plans, would be to remand the case to the Texas court – which is in the best position to address nuances of Texas election law and the deadlines of the election calendar – for that court to take into account the upcoming decision of the D.C. District Court on preclearance and consider the issues anew in light of further guidance from this Court.

COUNTERSTATEMENT OF FACTS

Appellees' opening brief sets forth a complete statement of facts. But in order to correct certain misstatements and mischaracterizations of the events leading up to the enactment of the redistricting plans and the subsequent litigation in the District of Columbia and the Western District of Texas, Appellees herein provide a brief counterstatement of the facts that were set forth in Appellants' brief.

I. The Enactment of the Senate Plan

Without a single citation to a single piece of record evidence to support its claims, the State asserts that it "worked diligently" and "moved quickly to pass new redistricting plans." State Br. 7-8. The State offers no explanation for why it waited until May to begin the redistricting process when census data was available as early as February, nor why it did not immediately submit its House and Senate Plans for preclearance. One party controls the Texas House, the Texas Senate and the executive branch, so the majority did not have to contend with partisan obstructionism to enact redistricting plans. Yet despite holding complete control of both the timing and the process to address redistricting, the State neither "worked diligently" nor "moved quickly" in its redistricting process, which is particularly troubling given that the Legislature knew all the while that it had some of the earliest primaries in the country.

The State also claims that when it finally got around to releasing redistricting plans, it "promptly sought additional input from the public and elected officials to ensure that the final plans fairly represented the relevant interests at stake." *Id.* at 8. If "promptly [seeking] additional input from the public and elected officials to ensure that the final plans fairly represented the relevant interests at stake," *id.*, means that the State sprung plans on minority legislators and the public at the last possible minute – leaving little time to analyze those plans – and subsequently ignored the concerns

raised about those plans, then the State's characterization of events is correct.

The only "elected officials" consulted about the redistricting plans were those representing majority Anglo districts. As was recounted in Appellees' opening brief, legislators representing minority districts were completely shut out of the process. *See* Davis and LULAC Appellees Br. 8 (citing Sen. West Decl. ¶ 3, J.A. 523; Sen. Zaffirini Decl. ¶¶ 2-3, 5-6, J.A. 518-19; Sen. Ellis Decl. ¶¶ 3-8, J.A. 527-30; Sen. Davis Decl. ¶¶ 9-13, J.A. 500, 502 (¶¶ 21, 25)). The Anglo majority in the Legislature crafted and finalized the Senate Plan behind closed doors and then presented it as a *fait accompli* at perfunctory hearings.

Moreover, "input from the public" was virtually non-existent. In previous redistricting cycles, state officials traveled throughout Texas holding advertised, open hearings for the public. *See, e.g.*, Sen. Zaffirini Decl. ¶ 4, J.A. 518-19; Lichtman Report 13, J.A. 491. In stark contrast, with respect to the 2011 State Senate Plan, the State held a single public hearing in Austin with just two days notice to the public. Sen. Zaffirini Decl. ¶ 4, J.A. 518-19.

As for purportedly "ensur[ing] that the final plans fairly represented the relevant interests at stake," State Br. 8, the timeline of events is particularly instructive. The State released its Senate Plan at 5:00 p.m. on May 10, 2011, and announced that a public hearing would be held on the plan beginning at 9:00 a.m. on May 12, 2011. *See* Davis-Veasey Pls.' Exs., *Davis v. Perry*, No. 5:11-

cv-00788, Ex. 32 [Dkt. 63] (W.D. Tex. Nov. 4, 2011), S.A. 1a;[1] Sen. Zaffirini Decl. ¶ 4, J.A. 518-19. This simply was not a good faith attempt to provide sufficient notice to citizens throughout the State of Texas to travel to Austin, much less to do so with enough time to review and respond to the maps. *See id.* Of the 32 people who were able to attend the hearing on such short notice, 30 testified to voice their strong opposition to the proposed Senate Plan. *See* S.A. 1a. In the face of this opposition, Chairman Seliger gave legislators opposing the Senate Plan until 5:00 p.m. that same day to file any amendments. *See id.* The next day, over the objections of every minority senator to the dismantling of Senate District 10, the Senate Redistricting Committee passed the Senate Plan and sent it to the Senate floor. *See id.* Senator Davis offered two amendments on the Senate floor that provided alternatives to dismantling Senate District 10. Both were tabled on party lines, and the Senate Plan passed on May 17, 2011. *See id.* at 2a. The Senate allowed less than a week between releasing the statewide proposal on May 11, 2011 and passing the bill.

The supposed "public" hearing in the Texas House of Representatives was even more of a sham. On May 18, 2011, there was an announcement on the House floor that there would be a "public" hearing on the proposed Senate Plan at 11:00 a.m. *that same day*. *See id.* Moreover, that hearing was held in the

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[1] The S.A. designation refers to the supplemental appendix accompanying this brief.

Agriculture Museum, which unlike legislative committee rooms, does not contain any video or audio recording capabilities, thereby denying the broader public any access to the meeting at all. *See id.* Two minority representatives offered amendments at the hearing to remedy the problems with dismantling Senate District 10. *See id.* at 2a-3a. Once again, the amendments were defeated. The House voted for the bill along party lines just three days later on May 21, 2011, over the objection of minority representatives. *See id.* at 4a.

Finally, the State's characterization of the adoption of the Senate Plan as "near-unanimous," State Br. 10, ignores the fact that the Senate Plan was opposed by every minority legislator. As explained in Appellees' opening brief, these legislators ultimately voted for the bill only because the alternative would have been even worse. *See* Davis and LULAC Appellees Br. 12-13 (citing Sen. Ellis Decl. ¶ 5, J.A. 528).

Thus, the reality of the redistricting process in Texas is far different from the picture the State attempts to paint in its brief.

II. The D.C. Preclearance Litigation

The State's characterization of the preclearance litigation in the D.C. District Court is similarly inaccurate. The State attempts to shift the blame to the United States, Intervenors, and the D.C. District Court for the delays in the litigation, but the reality is that the failure to obtain preclearance is entirely due to bad strategic choices made by the State.

As an initial matter, the State fails to explain why a redistricting plan passed in May was not submitted for preclearance until July. The State also fails to explain why it chose to file a declaratory action in the D.C. District Court without at least simultaneously pursuing the more "expeditious alternative" of administrative preclearance, as have several other states in 2011. *Morris v. Gressette*, 432 U.S. 491, 503-04 (1977). As the United States explained in its brief, six other states submitted their statewide redistricting plans simultaneously for administrative and judicial preclearance, and in every single case, the plans were administratively precleared within 60 days. *See* United States Amicus Br. 1a-3a; *see also id.* at 23-24 (discussing the ways in which seeking administrative preclearance would have prevented the issues of which Texas now complains). Instead, having made the choice to delay pursuing preclearance at all, and then to pursue only judicial preclearance, the State now complains that the judicial process is too slow.

Primarily, the State takes issue with the United States' and Intervenors' insistence on having discovery and an adequate trial. Under the State's logic, anything short of rubberstamping the Legislature's plans is undue delay. But this approach is fundamentally at odds with the structure of Section 5, which places the weight of demonstrating that the plans are not retrogressive on the State to "'shift the advantage of time and inertia from the perpetrators of the evil to its victim.'" *Beer v. United States*, 425 U.S. 130, 140

(1976) (quoting H.R. Rep. No. 94-196, at 57-58 (1970)).

The State's attempts to shift the blame for its own choices also are based on misrepresentations of the procedural history. Contrary to the State's assertions that the D.C. District Court "denied Texas' motion" to expedite, State Br. 11, the court actually granted the only relief the State requested in its motion, which was to "schedule a telephonic status conference to resolve outstanding the [sic] scheduling issues as soon as practicable." Tex. Mot. to Expedite, *Texas v. United States*, No. 11-cv-01303, at 3-4 [Dkt. # 10] (D.D.C. Aug. 11, 2011). The Court held that status conference promptly and issued a preliminary schedule *granting* Texas the right to file an early summary judgment motion. Minute Order, *Texas v. United States*, No. 11-cv-01303 [Dkt. # 17] (D.D.C. Aug. 17, 2011).

Similarly, contrary to its representations, the State has been far from "alone in urging that a prompt decision was necessary" in the D.C. District Court. State Br. 12. Given the exigencies of the situation, the United States initially offered to begin trial as early as October 17, 2011, to facilitate a prompt decision from the D.C. District Court. Tex. Mot. to Expedite, *Texas v. United States*, No. 11-cv-01303, at 2 n.2 [Dkt. # 10] (D.D.C. Aug. 11, 2011). However, the State insisted that no trial was necessary and chose instead to move for summary judgment. Even after the State's motion was filed and it became clear that issues of discriminatory intent could not be resolved on summary judgment,

the State still stubbornly pursued its flawed legal strategy, declining the D.C. District Court's invitation to the State to withdraw its motion and instead move forward with an immediate trial. *See* Davis and LULAC Appellees Br. 18-19. Given its choices, the State cannot now be heard to complain that the preclearance process is not yet complete.

Though the State suggests otherwise, there is nothing sinister in the United States' or Intervenors' oppositions to a motion for summary judgment based on an incomplete record in which discriminatory intent is a major issue. Questions of whether a state had an impermissible motive in enacting its redistricting plan are not susceptible to summary disposition. *See Hunt v. Cromartie*, 526 U.S. 541, 553-54 & n.9 (1999). Thus, opposing summary judgment is not "gamesmanship," State Br. 47, it is good sense. And the D.C. District Court's recent opinion denying summary judgment to the State amply demonstrates that the opposition to summary judgment was neither frivolous nor unfounded.

Indeed, glaringly absent from the State's recitation of the "facts" regarding the preclearance litigation is any discussion of the fact that the D.C. District Court *denied* summary judgment to the State. The State barely mentions this. *See* State Br. 12. But the D.C. District Court decided on November 8, 2011 (just days after oral argument on the motion for summary judgment) that there were "material issues of fact in dispute that prevent[ed] th[e] Court from entering declaratory judgment that the three redistricting plans meet the requirements of Section

5 of the Voting Rights Act" and further held that "the State of Texas used an improper standard or methodology to determine which districts afford minority voters the ability to elect their preferred candidates of choice." Order, *Texas v. United States*, No. 1:11-cv-01303, at 1-2 [Dkt. # 106] (D.D.C. Nov. 8, 2011), J.A. 550-51.

On December 22, 2011, the D.C. District Court issued a memorandum opinion further explaining its rationale for denying summary judgment. First, the Court found that "Texas misjudged which districts offer its minority citizens the ability to elect their preferred candidates in both its benchmark and proposed Plans." Mem. Op., *Texas v. United States*, No. 1:11-cv-01303, at 24 [Dkt. #115] (D.D.C. Dec. 22, 2011), Texas Latino Redistricting Task Force Addendum 30a (hereinafter "Add."). It thus held that "[s]ince Texas used the wrong standard, there are material facts in dispute about which districts are minority ability districts in the benchmark and proposed Plans." *Id.*

Second, the court found that "[i]n counting ability [to elect] districts, Texas ignored those in which coalitions of minority voters and coalitions of minority and White voters formed to support the minority-preferred candidate." *Id.* at 43a. As the court recognized, however, "Section 5 requires such consideration in determining whether minorities have the ability to elect preferred candidates" and the "statute states no preference for how the minority group is able to elect its preferred candidate, whether by cohesive voting by a single

minority group or by coalitions made up of different groups." *Id.* at 43a-44a. With particular salience for Senate District 10, the D.C. District Court found that the "freedom from an obligation to create a crossover district under Section 2 does not equate to freedom to ignore the reality of an existing crossover district in which minority citizens are able to elect their chosen candidates under Section 5." *Id.* at 46a-47a.

Finally, the D.C. District Court noted that a "redistricting plan that does not increase a minority group's voting power, despite a significant growth in that minority group's population, may provide significant circumstantial evidence that the plan was enacted with the purpose of denying or abridging that community's right to vote." *Id.* at 51a. The court found that there were "genuine issues of material fact regarding whether the Plans were enacted with discriminatory intent," *id.* at 54a, and further remarked that Texas had not even "disputed many of the Intervenors' specific allegations of discriminatory intent," *id.* at 56a.

Whether the State's enacted plans will ever be precleared is highly doubtful, but will be determined only after a trial in the D.C. District Court that is scheduled to begin imminently. What is clear, however, is that although the State attempts to point the finger at everyone else for the delays in the preclearance process, the fault lies with no one but the State.

III. The Texas Litigation

Even as Texas criticizes the D.C. District Court for moving too slowly, it also casts aspersions on the

Texas District Court for moving too fast and beginning the time-consuming process of drawing interim plans "[e]ven before it became clear that the D.C. court would not issue a final decision on preclearance in time for the start of the 2012 election cycle." State Br. 16.

The Texas court, however, merely observed that "because a resolution of the Section 5 preclearance issues prior to the upcoming election deadlines [was] becoming more unlikely," the court had "an obligation to the public to consider other available options so that the 2012 election process may move forward." J.A. 216. In light of the "tremendous amount of work" required to implement an interim plan, the Texas Court asked for the full cooperation of the parties to propose interim plans. The court also appointed two employees of the Texas Legislative Council to assist it in its task. *See id.*

The State did not object to the court beginning the process of interim map drawing prior to the summary judgment disposition in the D.C. District Court. Indeed, the State encouraged the Texas court to move forward with proceedings so that interim maps could be in place if necessary. *See* Resp. in Opp. to Mot. to Stay, *Perez, et al. v. Perry*, No. 5:11-cv-00360, at 5-6 [Dkt. # 179] (W.D. Tex. Aug. 11, 2011) (urging the Texas court to "consider evidence and argument on the alleged defects in the plans so that it may enter a judgment or draw a remedial plan, as the case may be, in time for the 2012 elections to proceed"). Nor did the State object to the appointment of state employees as technical advisors

to the court, or the schedule proposed by the court for implementing interim maps. Instead, the State simply argued that the court should use its enacted, unprecleared plans as the interim maps. *See id.* For the reasons explained in Appellees' opening brief and below, that was not a viable option for the Texas court. Thus, although the State now complains that the Texas court imposed interim maps, the State not only did not object to the process below, it actually urged the court to move forward with the interim map drawing process. *See id.* at 7 (instructing the Texas court that "as a practical matter, the need to have a plan in place for the upcoming elections will require this Court to create an interim plan if preclearance is delayed or denied").

IV. The Interim Senate Order

The State devotes a total of three paragraphs in its 63-page brief to its discussion of the interim Senate Order. *See* State Br. 21-22. No doubt that is because any discussion of the court's interim Senate Plan would significantly undercut the State's argument in the remainder of its brief that the Texas court was insufficiently deferential to the State's enacted plans.

The Texas court originally proposed Plan S163 as the interim Senate plan on November 17, 2011. The court's proposal was *not* the plan proposed by Appellees, but rather one devised independently by the court assisted by its technical advisors. In its initial proposal, the court attempted to achieve minimal population deviations, with every district deviating from the ideal population by less than 1%.

Davis v. Perry, No. 5:11-cv-00788 [Dkt. # 86] (W.D. Tex. Nov. 17, 2011), J.A. 410. The State objected to this attempt to achieve population equality across all districts given that "Plaintiffs' only challenge relates to Senate District 10." J.A. 438. As to the court's redrawing of Senate District 10, the State "agree[d] with the Court's refusal to redraw Senate District 10 as requested by Plaintiffs" and acknowledged that all the court had done was to "return[] Senate 10 to its prior configuration." J.A. 442. The State also conceded that the court's plan was "in many ways based roughly on the legislatively enacted plan." J.A. 437.

The Texas court responded to the State's criticisms by abandoning its attempt to achieve minimal population deviations. In the final version of the interim plan, ordered into effect on November 23, 2011, the court kept completely intact 26 of the State's 31 legislatively enacted districts and restored Senate District 10 to exactly the same configuration that it had in the benchmark 2001 plan. Indeed, Senate District 10 in the court's interim map is completely identical – down to the block level – to Senate District 10 in the benchmark plan. *Compare* Plan S100 (Benchmark) Map, M.J.A. 74, *with* Court-ordered Interim Map, M.J.A. 73; *see also* Map Comparing Changes to Senate District 10, M.J.A. 75. Thus, as the court noted, its interim map simply "maintain[s] the status quo from the benchmark plan with regard to Senate District 10 pending resolution of the litigation in the District of Columbia but

otherwise ... use[s] the enacted map as much as possible." J.A. 408.[2]

Given the court's statement, as well as the State's own concession that the court's interim map was based on the State's legislatively enacted plan, the State's repeated mantra throughout its brief that the Texas court accorded "no deference to the State's duly-enacted maps," State Br. i; *see also id.* at 3, 27, 48, is flat-out wrong. The Texas court's interim Senate Plan uses 26 of the 31 legislatively enacted districts *exactly* as the Legislature drew them in 2011. Moreover, the configuration of District 10 is *exactly* as the Legislature drew it in 2001, and the remaining four districts are as close to the State's enacted plan as possible after adjusting for the reconfiguration of District 10. That is hardly "no deference."

SUMMARY OF ARGUMENT

1. The State's position before this Court is supported by neither law nor logic. The State acknowledges that it failed to obtain preclearance of its redistricting plans in time for the 2012 elections, but asks that it be permitted to use them nonetheless. This would render Section 5 of the Voting Rights Act effectively meaningless.

Longstanding precedent from this Court requires that an interim map must be put into place when

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[2] The court noted that while "[f]ive districts (9, 10, 12, 22, and 30) are different from the enacted map," the "changes to districts 9, 12, 22, and 30 are the result of keeping district 10 the same as in the benchmark." J.A. 408 n.2.

elections are imminent and the State has no legal map. That is exactly the situation here. Without preclearance, the State's legislatively enacted plans were not legally in effect. And the only plans that had been precleared and put into effect – the 2001 plans – were, by the time of the 2010 census, wildly malapportioned. The court below therefore acted in accord with this Court's precedent to prevent both the statutory violation that would occur if it were to permit the unprecleared plans to take effect, and the constitutional violation that would occur if it were to permit the malapportioned 2001 plans to remain in place. Though the State contends the court exceeded its remedial powers in implementing interim plans that differed from the State's enacted plans without making findings that the State's enacted plans violated the law, the State is addressing the wrong remedy.

As demonstrated in Appellees' opening briefs and herein, it would have been premature for the court below to address the proper remedy for the enacted plans' violations of Section 2 or the Constitution, because those claims were not yet ripe. And it would have been improper for the court below to address the proper remedy for violations of Section 5 because Section 5 determinations are committed to the exclusive jurisdiction of the D.C. District Court and the Attorney General. The Texas court therefore addressed only the issues that were properly before it, in keeping with well-established principles from this Court.

The State's insistence that the Texas court was required to defer in all instances to the State's enacted maps is flatly inconsistent with the requirements of Section 5. Moreover, the State's position is untenable as a practical matter. Had the court below simply ordered the State's plans into effect, preclearance still would have been required, which would recreate exactly the problem the court below was trying to remedy – impending elections with no precleared, properly apportioned map. The Texas court therefore did exactly what it was supposed to do, drawing its own interim maps that deferred to the State's enacted plans to a substantial degree, but also relying on the benchmark districts where deference was not possible.

2. Unable to persuade the Texas court to order its plans into effect without preclearance, the State now asks this Court to do just that. But this Court may not – consistent with the Voting Rights Act and the Constitution – order into effect a redistricting plan that has not been precleared and is subject to other significant legal challenges. Even assuming that the Court concludes that the Texas court acted prematurely or was insufficiently deferential when it put in place the interim plans, the remedy cannot be to direct use of maps that likely violate not only Section 5, but also Section 2 and the Fourteenth Amendment. And that is especially true given that use of the enacted maps now would itself require considerable delay and confusion as jurisdictions all over Texas undertake the very revisions of precincts (and preclearance thereof) that the Texas court

sought to avoid with the way it drew the interim plans.

If the Court does not affirm the orders below outright, there are two other options. First, the Court could remand to allow the preclearance process to play itself out. There will be a trial in the D.C. court this month, likely resulting in preclearance rulings in early February. At that point, the Texas court could devise new maps that repair any Section 5 violations found by the D.C. court (which are likely to be considerable), and in so doing, avoid any likely violations of Section 2 and the Constitution that the Texas court might find based on evidence that already has been adduced. Under that scenario, the State would get precisely what it purports to want – court orders tied to likely (or actual) violations of law.

The second alternative is to rule that even if the Texas court's interim map orders were improper in some way, the interim maps should still be used for the 2012 elections. This would allow the elections to move forward much more expeditiously, with much less delay, than any other alternative. Though in this scenario, the Court may conclude that the interim maps in some way intruded on the sovereign interests of the State, the court's interim maps still have the virtue that no one claims they deny the voters of Texas their rights under the Voting Rights Act and the Fourteenth Amendment. The same cannot be said of the State's enacted maps. Especially given that this unprecedented situation has been largely the fault of the State delaying its

preclearance efforts, the Court should not permit the State to use that delay to get a pass for 2012 on its obligations to respect the voting rights of its citizens.

Finally, to the extent the Court decides to remand rather than uphold the orders imposing the interim plans, the Court should not accept the State's invitation to decide now, without a full record and full argument, the merits of how the Voting Rights Act applies to the maps that Texas chose to enact in 2011, particularly with respect to coalition districts.

ARGUMENT

I. The District Court Acted Correctly in Drawing Its Own Map Based on Multiple Sources of Guidance, Including the Enacted Map.

A. Appellants Mischaracterize the Issues By Acting as if the Court Was Adjudicating a Challenge to the Enacted Map.

A central theme of the State's presentation is the notion that the Texas District Court was not acting as a court of law because, in drawing the interim maps, it was not attempting to remedy any violation of law. *See, e.g.,* State Br. 37-45. This is flatly wrong. The violation of law that the court was remedying was the State's failure to have available for use, at the start of the election process, district maps that were drawn using the data from the 2010 Census.

"When the decennial census numbers are released, States *must* redistrict to account for any changes or shifts in population.... And if the State

has not redistricted in response to the new census figures, a federal court will ensure that the districts comply with the one-person, one-vote mandate before the next election." *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003) (emphasis added) (citing *Branch v. Smith*, 538 U.S. 254 (2003); *Lawyer v. Dep't of Justice*, 521 U.S. 567 (1997); *Growe v. Emison*, 507 U.S. 25 (1993)). That is all the Texas court was doing. Under clear and well-established law, the interim maps were necessary to prevent the State from violating the constitutional rights of its voters by requiring them to vote using malapportioned districts.

The situation is no different in principle from that which arose in 2001, when the Texas legislature failed altogether to enact a new congressional map, and a federal district court was required to draw one itself in order to have available the right number equally populated districts. *See Balderas v. Texas*, No. 6:01cv158, 2001 U.S. Dist. LEXIS 25740 (W.D. Tex. Nov. 14, 2001), *summarily aff'd*, 536 U.S. 919 (2002). To be sure, the equitable principles governing how a court should draw an interim map may differ depending on whether the legislature has simply failed to pass a map, or has passed a map but failed to get a decision on preclearance. But there is no basis for the State's inflated rhetoric that the District Court was not acting like a court resolving a case or controversy. *See* State Br. at 37-40. The District Court was remedying a threatened constitutional violation caused by the State's failure to have a constitutional map available for use, and thus was playing a quintessentially judicial role.

See, e.g., McDaniel v. Sanchez, 452 U.S. 130, 153 n.35 (1981) ("The district courts ... have ample power to fashion interim remedies to avoid problems [caused by malapportionment of districts].").

For that reason, it is also wrong for the State to argue that the Texas court, if it was to retain a judicial role, had to convene a preliminary injunction hearing and make findings and conclusions about the likely legality of the enacted plans before taking any action. *See* State Br. 50-52. That misunderstands the nature of the legal claim the court was addressing and remedying. The court was forestalling the State's looming constitutional violation of the requirement of one-person one-vote as a result of its failure to have new maps ready to use. It was not addressing the legality of any maps that might emerge successfully from the preclearance process, because that issue was not yet presented. Indeed, it would have been "premature, given th[e] statutory scheme [under the Voting Rights Act], for the court to consider" any question other than whether the "state reapportionment enactments have ... been precleared in accordance with § 5." *Branch v. Smith*, 538 U.S. 254, 283 (2003) (Kennedy, J., concurring); *see also Connor v. Waller*, 421 U.S. 656 (1975) (*per curiam*); *United States v. Board of Supervisors of Warren Cnty.*, 429 U.S. 642, 646-47 (1977) (*per curiam*); *Connor v. Finch*, 431 U.S. 407, 412 (1977); *Wise v. Lipscomb*, 437 U.S. 535, 541-42 (1978) (opinion of White, J.). Once the court concluded that the State's maps would not be precleared in time for the election, it was left with the unwelcome obligation of crafting its own maps.

B. Because the Enacted Maps Were Not Legally in Effect, the District Court Was Correct That it Was Not Required to Accord Them Deference.

In deciding how to draw interim maps to address the State's failure to have legal maps ready for use in the 2012 primary election, the Texas court was correct that it was not required to defer to the enacted plans. The State's central argument – that its new maps had to be treated as presumptively lawful, and therefore had to be used as the interim maps except to the extent the Texas court found specific features to be likely violations of law – is erroneous. As a matter of law, the new maps are not legally in effect until precleared. That means – contrary to the State's claims – that they are not presumed to be lawful.

Section 5 mandates that election changes made by covered jurisdictions are not effective as law until the jurisdiction *proves* that its proposed change has neither the purpose nor the effect of denying or abridging the right to vote on account of race or language minority status. Section 5 thus reverses the usual presumption that a State law is valid unless proven otherwise. *See, e.g., Georgia v. Ashcroft*, 539 U.S. at 471 (noting that the state "bears the burden of proof" in Section 5 actions) (citing *Pleasant Grove v. United States*, 479 U.S. 462 (1987)); *Beer*, 425 U.S. at 140 (Section 5 "shift[s] the advantage of time and inertia from the perpetrators of the evil to its victim,' by 'freezing election procedures in the covered areas unless the changes

can be shown to be nondiscriminatory'") (quoting H.R. Rep. No. 94-196, at 57-58 (1970)); *Georgia v. United States*, 411 U.S. 526, 538 (1973) (same); *Young v. Fordice*, 520 U.S. 273, 285 (1997) (recognizing that the purpose of Section 5 is to "preserv[e] the status quo until the Attorney General or the courts have an opportunity to evaluate a proposed change"); *see also* United States Amicus Br. 13-14. The central flaw in the State's entire presentation is its refusal to accept this fundamental feature of Section 5. Unless and until preclearance of an election change in a covered jurisdiction has been granted, courts *cannot* presume that the State acted lawfully. *See* 42 U.S.C. § 1973c(a).

Attempting to paper over this problem, the State asserts that Section 5 "does not rob covered jurisdictions of [the] fundamental presumption of good faith." State Br. at 35. But Section 5 does exactly that. Section 5 "was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. That practice had been possible because each new law remained in effect until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory." *Beer*, 425 U.S. at 140 (internal quotation marks omitted). Section 5 reversed that state of affairs, placing the burden of proving that a new voting law was not discriminatory on the State, and requiring the State to make that showing before the law could go into effect. The State's reliance on *Miller v. Johnson*, 515

U.S. 900 (1995), and *Upham v. Seamon*, 456 U.S. 37 (1982), in support of its position that it is entitled to a "presumption of good faith" in making that showing is completely misplaced. *See* State Br. 34-36.

The State takes the "presumption of good faith" language from *Miller* completely out of context. *Miller* was not a Section 5 case and had nothing at all to say about the presumptions that apply in the context of Section 5. Instead, the Court in *Miller* was adjudicating a claim of racial gerrymandering under *Shaw v. Reno*, 509 U.S. 630 (1993), mounted against a district map that had already been precleared. In that context, the Court simply observed that "[a]lthough race-based decisionmaking is inherently suspect until a claimant makes a showing sufficient to support that allegation, the good faith of a state legislature must be presumed." *Miller*, 515 U.S. at 915 (internal citations omitted). Thus, when bringing a racial gerrymandering claim, a plaintiff must show "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* at 916. *Miller* is entirely inapposite to the situation presented here. Under Section 5, there is no presumption of good faith accorded to legislative enactments. Rather, Section 5 places the burden squarely on the covered jurisdiction to *prove* that its enactments are lawful. In fact, as this Court has held, whether or not a legislative enactment was made in "good faith" by a covered jurisdiction is entirely irrelevant. All that matters is that the change must receive preclearance

before it can be implemented. *See NAACP v. Hampton Cnty. Election Comm'n*, 470 U.S. 166, 180 (1985) (rejecting appellees' position that "the changes here at issue did not require preclearance because they were undertaken in good faith").

Nor does *Upham v. Seamon* support the State's claim that unprecleared district maps warrant deference and a presumption of good faith. *Upham* involved a court's failure to defer to the portions of a district map that *had* been approved by the Attorney General in the preclearance process. *See* Davis and LULAC Appellees Br. 39-42. The Court simply held that when a court is remedying violations of Section 5 identified by the Attorney General, it should not simultaneously change unrelated parts of the map that have been found to satisfy their burden under Section 5. *See id.* Here, by contrast, no part of any map has been precleared or denied preclearance. The State still bears the burden of proving that all aspects of its maps are consistent with the requirements of Section 5.

This reversal of the usual presumptions is reflected in the fact that preclearance is still required even when a court adopts a previously enacted map as its own by court order. *See Lopez v. Monterey Cnty.*, 519 U.S. 9, 22 (1996) ("[W]here a [federal] court adopts a proposal 'reflecting the policy choices ... of the people [in a covered jurisdiction] ... the preclearance requirement of the Voting Rights Act is applicable.'" (citation omitted; alterations in original)); *see also McDaniel*, 452 U.S. at 153. Even a federal court's order implementing a covered

jurisdiction's voting change does not suffice to create a presumption of validity or eliminate the need for preclearance, because Congress mandated that there be Section 5 review of *every* election change originating in the legislature of a covered jurisdiction. It was therefore both proper and eminently practical for the Texas court to draw its *own* interim maps and to do so without using the enacted maps as the starting point in every instance. Only by drawing its own interim maps could the Texas court avoid the need for preclearance.

Concerning this point, the State's only answer is to suggest that an unprecleared but judicially approved enacted plan could be used for the 2012 elections and precleared thereafter. State Br. 52-53. It cites for this proposition a Justice Department regulation – 28 C.F.R. § 51.18(d). But that regulation says nothing about the circumstances in which a federal court may properly authorize emergency use of an unprecleared change in election law enacted by a covered jurisdiction. It simply provides that *if* a court does authorize such an emergency use, doing so "does not exempt from section 5 review any use of that practice not explicitly authorized by the court." *Id.*; *see also* United States Amicus Br. 28. Moreover, even assuming that the regulation did authorize emergency exemptions from preclearance, it is of no help here to the State for two reasons.

First, no authority comes close to supporting the proposition that there is an emergency sufficiently serious to justify use of an unprecleared election

change ten months before the general election. To the contrary, this Court's precedent has demanded preclearance in similar circumstances. For example, in *Branch v. Smith*, 538 U.S. 254, 261-64 (2003), this Court unanimously upheld a federal district court's substitution of its own interim redistricting plan for one drawn by a state court, where the latter had not received preclearance. The substitution occurred in February of the first election year after the 2000 Census. No one even suggested that the federal court erred by not excusing the State from the preclearance requirement in such a factual setting.[3]

Second, even if this could be deemed an emergency, the State's argument is not so confined. It argues that a federal court must *always* defer to state policy choices reflected in election laws, even if those laws are unprecleared. That claim simply cannot be squared with the principle that a federal judicial blessing of an election change made by covered jurisdiction in no way eliminates the preclearance requirement. The State clearly is implicitly asking this Court to say that federal courts have plenary power to exempt state actions from the preclearance requirement. But such a ruling would be legally indefensible.

Finally, as the United States points out, the State's argument that a covered jurisdiction should receive a presumption of good faith if it is actively

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[3] *Johnson v. Mortham*, 926 F. Supp. 1460 (N.D. Fla. 1996), does not support Appellants' interpretation of this regulation. The district court in that case never ordered into effect an unprecleared redistricting plan.

seeking preclearance is both unsupported by the text of Section 5 and practically unworkable. *See* United States Amicus Br. 14. As a textual matter, Section 5 distinguishes solely between those plans that have *completed* the preclearance process and those that have not. And as a practical matter, there is no principled standard by which courts can determine how actively a state is pursuing preclearance. The State's proposed rule is legally indefensible and practically unworkable.

C. Although Deference Was Not Legally Mandated, the District Court Did Give Due Consideration to What the Legislature Had Passed.

Despite the principle that Section 5 reverses the usual presumption of validity, and despite the need for the Texas court's interim maps to deviate from the enacted plans in order to avoid retriggering the preclearance requirement, the Texas court did not totally disregard the enacted maps as the State repeatedly claims. Instead, the court below understood that it made sense to utilize those maps as a source of guidance because they were the most recent expression of the policy preferences of the elected representatives of the people of Texas. It therefore chose to model its districts on the Legislature's recent policy choices where it could do so without making either (1) Section 5 determinations that were jurisdictionally barred because committed to the D.C. District Court, or (2) Section 2 and constitutional determinations that

were prudentially barred as unripe until the preclearance process is complete.

That effort to defer where possible is particularly obvious in the court-ordered interim Senate Plan. For the most part, the State assiduously avoids discussion of the interim Senate Plan in its brief because any analysis of that plan would reveal that the State's claim that the Texas court "refus[ed] to grant *any* deference to Texas' legislatively enacted districting maps," State Br. 27 (emphasis in original), is demonstrably false.

As to the Senate Plan, because the "only objections raised to the State's enacted map in this litigation concerned Senate District 10," the Texas court concluded that the "appropriate exercise of 'equitable discretion in reconciling the requirements of the Constitution with the goals of state political policy' was to maintain the status quo from the benchmark plan with regard to Senate District 10 pending resolution of the litigation in the District of Columbia but *otherwise to use the enacted map as much as possible*." J.A. 407-08 (footnote omitted; emphasis added). The court below thus kept intact 26 of 31 districts in the State's 2011 enacted plan. It redrew only Senate District 10 and the surrounding four districts to restore District 10 precisely to its pre-existing configuration in the only currently precleared, legislatively enacted map – the 2001 plan. *Compare* Plan S100 (Benchmark) Map, M.J.A. 74, *with* Court-ordered Interim Map, M.J.A. 73; *see also* Map Comparing Changes to Senate District 10, M.J.A. 75.

In restoring Senate District 10 to the exact same district as existed in the benchmark map, the Texas court's interim plan completely respected the policy choices of elected representatives in Texas as they were reflected in the Senate plan that was adopted in 2001 and precleared by the Department of Justice. And the remaining districts adhered to the State's policy choices in its 2011 plan. Thus, all 31 of the Senate districts in the three-judge court's interim plan reflect policy choices made at some point by the Texas Legislature. In fact, the Texas court's deference to the enacted Senate Plan was so complete outside of the Dallas area that it risked violating the principle that court-drawn maps reflecting state policy choices themselves require preclearance.

The claim that the Texas court failed to defer to the enacted maps is also untrue as to the other maps at issue, although the circumstances surrounding those maps imposed greater limitations on the court's ability to defer. With regard to the Congressional map, for example, the court was faced with an enacted map that was the product of a concerted effort to prevent any increases in the number of districts controlled by minority voters, despite the fact that the State gained four new seats only as a result of an increase in minority population. As a result, in D.C. and Texas, there are pending specific challenges to district configurations almost everywhere that minority population exists. Moreover, the Texas court knew that there was a "statewide" challenge to the overall reduction in the proportion of districts in which minority voters had

an opportunity to elect candidates of choice, as a result of the effort to prevent any net increase in the number of those districts as the State moved from 32 to 36 seats in Congress. In this situation, in order to avoid prejudging the merits of pending claims and produce a map that could fairly be seen as a judicial product not warranting preclearance review, the court needed to draw an interim map that departed much more substantially from the enacted plan than did the interim Senate map. The court also wanted to avoid splitting precincts so that the map caused fewer election administration difficulties and could be used expeditiously. But the Texas court still followed the Legislature's enacted map to a significant extent – for example in the Houston area, J.A. 140, between Houston and Austin, J.A. 141, and between San Antonio and Austin, J.A. 142.

The cases that the State relies upon for its argument that the district court's interim plans swept more broadly than necessary are entirely inapposite. *See* State Br. 43-44 (relying on *Whitcomb v. Chavis*, 403 U.S. 124, 160-61 (1971) and *Milliken v. Bradley*, 418 U.S. 717 (1974)). This is not a case where the court remedied problems that were strictly isolated in one area by also seeking to alter unrelated districts. Rather, the nature of the violation itself required adjustments to be made to avoid simply implementing the challenged plan and triggering a preclearance requirement, while also avoiding premature rulings on the challenges to the enacted plans.

Given the legal and practical constraints it was facing, there is no basis for faulting the District Court's decision to draw maps that reflected the lines both in the benchmark maps and in the recently enacted maps, while avoiding a premature ruling on the merits of particular claims pending in the D.C. and Texas litigation challenging the enacted maps. The State complains that this effectively meant that the court was granting relief to the challengers on all of their claims without ruling on the merits of those claims. State Br. 41-42. But the alternative – that the court should have adjudicated the merits of all of those claims, under Section 5, Section 2 and the Constitution – was simply not an option for the Texas court.

The State's suggested approach ignores the jurisdictional bar to courts outside D.C. adjudicating Section 5 claims, as well as the well-established principle that courts should not adjudicate other legal challenges to election changes until they have been precleared. *See* Davis and LULAC Appellees Br. 36-39. The State seems to think that these prohibitions do not apply as long as the court confines itself to making "preliminary" findings about the "likely" legality or illegality of enacted but unprecleared plans. *See* State Br. 50-51. But it cites no authority for that proposition and it makes no sense. If the court in Texas lacked jurisdiction to adjudicate Section 5 claims, it is hard to see how it can have jurisdiction to address those claims in a preliminary injunction proceeding – particularly when the same claims were already pending in a D.C. court.

Such a scheme would be flatly inconsistent with the concept of exclusive jurisdiction. In other contexts, where Congress has committed exclusive jurisdiction over statutory matters to one court, other courts have consistently found that they lack the authority to adjudicate preliminary injunction proceedings related to that exclusive grant of authority. *See, e.g., Megapulse, Inc. v. Lewis*, 672 F.2d 959, 967-68 (D.C. Cir. 1982) (holding with regard to contract dispute actions against the United States committed to the exclusive jurisdiction of the Court of Federal Claims and Boards of Contract Appeals that "a district court has no power to grant injunctive relief in such a case"); *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 77 (D.C. Cir. 1984) (holding with regard to FCC actions committed to the District of Columbia Circuit that "a statute which vests jurisdiction in a particular court cuts off original jurisdiction in other courts in all cases covered by that statute"). There is no reason the rule should be any different here.

The State's argument also ignores the practical constraints facing the court below. Many of the challengers' claims involved fact-intensive allegations of intentional discrimination. *See Hunt*, 526 U.S. at 553-54 & n.9. Others involved novel questions of interpretation of Section 5 that the D.C. District Court was in the process of addressing for the first time. The Texas court had very limited time – given the looming candidate filing deadlines that already had been pushed back once – in which to develop interim plans that differed enough from the enacted plans that they would not themselves

require preclearance. Given the circumstances, the court adopted a practical approach of looking to several sources of guidance, deferring to the enacted plans where it could, but also maintaining the status quo of the benchmark plans to a substantial extent. This Court should not second-guess district courts and tie the hands of judges who have a duty to remedy constitutional one-person, one-vote violations by imposing temporary plans in the face of multi-jurisdiction lawsuits, numerous pending claims, complex factual circumstances and looming state law election deadlines.

In any event, the State's claim that the Texas court effectively accepted all of the challengers' arguments is also overstated. *See* State Br. 46-48. Concerning the Senate map, for example, Appellees argued not only (1) that the elimination of Senate District 10 was intentionally discriminatory and retrogressive, but also (2) that Section 2 of the Voting Rights Act required the creation of a new, compact district in which minority voters would constitute more that 50% of the citizens of voting age. *See* Statewide Map of Davis Plaintiffs' Proposed Senate Districts, M.J.A. 77. But the District Court did not draw such a district. It chose instead to take a more modest approach, simply restoring the *status quo ante*. *Compare id. with* Statewide Map of Court-Drawn Interim Texas Senate Districts, M.J.A. 73.

II. As Both a Legal and a Practical Matter, the State's Enacted Plans May Not Be Used for the 2012 Elections Unless and Until They Are Precleared.

Having presented a fallacious legal challenge to the Texas court's approach to interim mapping, the State then "goes for a home run," asking the Court to order the use of the enacted plans as the interim plans for 2012 rather than remand for application of whatever legal principles this Court decides the lower court misunderstood. *See* State Br. 54-55 (arguing that "this Court should vacate the interim orders and remand to the district court with instructions to impose Texas' legislatively enacted plan as the interim plan"). That would be both illogical and unjustified. First, as a practical matter, if primary elections are not going to be delayed, the only maps that can be used are the interim maps. Second, if primaries are going to be delayed, the only sensible approach is to allow the preclearance trial to proceed to a quick judgment, and then ask the Texas court to impose interim replacements for any maps not precleared, and to adjudicate pending challenges to any maps that are precleared. The alternative of allowing the State to use maps that are subject to very substantial legal challenges, just because it deliberately avoided a quick preclearance decision last summer, would be indefensible.

A. The State's Request to Be Allowed to Use the Enacted Maps Gets All the Practical Considerations Wrong.

It would make no practical sense for this Court to mandate use of the enacted plans on the theory that there is insufficient time for any other choice. In fact, use of the enacted plans would require a great deal of delay. Election officials are already extremely anxious about the proposed schedule for primary elections. *See* Texas Municipal League Correspondence to the Court, *Perez, et al. v. Perry*, No. 11-cv-360 [Dkt #567] (W.D. Tex. Dec. 22, 2011), 2 S.J.A. 23-26 (discussing difficulties for election officials in scheduling); Texas Conference of Urban Counties Joint Advisory Mem., *Perez, et al. v. Perry*, No. 11-cv-360 [Dkt. #565] (W.D. Tex. Dec. 21, 2011), 2 S.J.A. 16-22 (same); Texas Conference of Urban Counties Supp. Joint Advisory Mem., *Perez et al. v. Perry*, No. 11-cv-360 [Dkt. #571] (W.D. Tex. Dec. 29, 2011), 2 S.J.A. 1-15 (same). Ordering into effect the State's plans would merely heighten this anxiety given the great number of precinct changes that would be required to implement these plans. In contrast, the Texas court was fully aware of the burdens on election officials in drawing its interim plans and acted to minimize those burdens wherever possible.

The State's plans resulted in significant departures from the organization of electoral units in the benchmark plan, in particular by fragmenting minority voters into new districts throughout the State. In so doing, the State's plans split

substantially more precincts – or voter tabulation districts ("VTDs") – than the interim plans. *See* J.A. 116 n.24; *see also id.* at 102-03. Splitting VTDs is "'the single most troubling and realistic hurdle'" in implementing a new plan because it causes "enormous administrative and financial difficulties for local governments preparing for an election at the eleventh hour." *See id.* at 102 (quoting *Vera v. Bush*, 933 F. Supp. 1341, 1347 (S.D. Tex. 1996)). Thus, the Texas court was particularly mindful of its "obligation to ensure that the interim map does not contain split VTDs so that it is capable of being implemented under severe time constraints." *Id.* at 90. With respect to the House plan, the Texas court's interim map contains just 8 split VTDs in the entire state, while the State's enacted plan contains 412 split VTDs. *See id.* at 102-03. Similarly, the Texas court's interim congressional map contains just 3 split VTDs in the entire state, while the State's enacted plan contains 518 split VTDs. *See id.* at 116 n. 24. And the Texas court's interim Senate plan hews more closely to the benchmark plan, including by creating fewer splits to Tarrant County, thereby necessitating fewer changes. *Compare* M.J.A. 72, 73, 74, and 78; *see also* M.J.A. 75. Plainly the court's plans are more easily capable of implementation than are the State's.

In sum, there is not only no valid legal reason for the Court to order the State's legislatively enacted plans into effect, there is also no valid practical reason. On the basis of practicality alone, this Court should lift its stay and order the Texas court's interim plans into place.

B. Under No Circumstances Should the Court Mandate Use of Plans Subject to Substantial Legal and Constitutional Challenges.

Even assuming that the Texas District Court erred in promulgating its interim maps at the time it did so or was insufficiently deferential to the State's maps, there can be no legal justification for allowing the State to utilize the enacted maps for 2012 without first adjudicating the Section 5, Section 2 and constitutional challenges to the enacted maps that were properly filed by Appellees months ago. With ten months to go before the 2012 general elections, there is still time to assure that the people of Texas are not required to elect their representatives using maps that violate the Constitution and/or the Voting Rights Act.

As the D.C. District Court recently made clear, there are significant issues with the State's enacted maps. *See supra* pp. 11-12. Given that it is highly doubtful that the State's enacted plans will ever receive preclearance, as well as the serious Section 2 and constitutional challenges that remain pending in the Texas court, this Court cannot simply order the State's enacted plans into place for the 2012 elections.

The notion that it is simply too late to adjudicate the legality of the Texas maps and then repair any flaws cannot be squared with this Court's precedent generally forbidding the use of unconstitutional redistricting plans. As this Court held in *Reynolds v. Sims*, 377 U.S. 533 (1964): "[O]nce a State's

legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a Court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." 377 U.S. at 585. The Court elaborated on these principles in *Wise v. Lipscomb*, 437 U.S. 535 (1978), when it observed that "[l]egislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election make it impractical for them to do so, it becomes the 'unwelcome obligation,' ... of the federal court to devise and impose a reapportionment plan pending later legislative action." 437 U.S. at 540.

The State's claim that it is simply too late to do anything other than order the enacted plans into place for the 2012 elections is further belied by the events in Texas in 1996 when a three-judge court ruled in August that the congressional election that year would be conducted using a court-drawn interim map remedying a prior map that included racial gerrymandering, even though doing so would result in changes to the election schedule. *See Vera v. Bush,* 933 F. Supp. 1341, 1347 (S.D. Tex. 1996). If August of an election year is not too late to remedy legal flaws in redistricting maps, January certainly is not too late.

Nor does the regulation cited by the State provide a legal basis for avoiding adjudication of the pending claims. *See* State Br. at 55 (citing 28 C.F.R. § 51.18(d)). Even assuming that the regulation could

properly be read to say that it would be consistent with Section 5 for the Texas court to order use of an unprecleared legislatively enacted plan for the 2012 elections, *but see supra* p. 27, the regulation does not purport to authorize courts to disregard substantial challenges to redistricting plans brought under the Constitution or Section 2. It simply does not address that issue. Nor would the Department of Justice have any right to grant such an authorization. Such matters are within the province of the courts, not the Department of Justice.

Rather than authorizing the State of Texas to conduct elections using maps that potentially violate the law, the Court has two other options if it concludes interim map orders were premature or otherwise unsound. First, it can remand to allow the adjudication process to go forward. We now know (as the Court did not when it noted probable jurisdiction) that there will be a trial in the preclearance case this month, culminating in likely rulings early in February. At that point, the Texas court could devise maps that remedy any violations of Section 5 that are found by the D.C. court, as well as remedy any likely violations of Section 2 and the Equal Protection Clause. The evidence needed for the latter rulings is all, or nearly all, in the Texas record. If the process is allowed to go forward in this normal way, Texas will have received exactly what it purports to want – orders changing the enacted maps that are tied to specific findings of illegality.

Alternatively, if the time is too short as the State now claims, the only feasible and lawful other choice

is to direct that the elections be conducted using the interim maps. Even if the Court concludes that these maps came too soon or departed too much from the State's enacted maps, no one is now claiming that they violate anyone's voting rights. The same obviously cannot be said about the maps that the Texas Legislature chose to pass last year. "Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds*, 377 U.S. at 562. If this Court concludes its only choice is between using maps with serious alleged infringements citizens' voting rights and using maps without such allegations, the answer is obvious. *See also, e.g.,* United States Amicus Br. 33-34.

Moreover, as a practical matter, the local jurisdictions in Texas have made clear that they are much more prepared to conduct primary elections using these maps than any others. *See* Texas Municipal League Correspondence to the Court, *Perez, et al. v. Perry*, No. 11-cv-360 [Dkt #567] (W.D. Tex. Dec. 22, 2011), 2 S.J.A. 23-26 (discussing difficulties for election officials in scheduling); Texas Conference of Urban Counties Joint Advisory Mem., *Perez, et al. v. Perry*, No. 11-cv-360 [Dkt. #565] (W.D. Tex. Dec. 21, 2011), 2 S.J.A. 16-22 (same); Texas Conference of Urban Counties Supp. Joint Advisory Mem., *Perez et al. v. Perry*, No. 11-cv-360 [Dkt. #571] (W.D. Tex. Dec. 29, 2011), 2 S.J.A. 1-15 (same). For ease of implementation, the court's maps are clearly superior to the State's.

C. To the Extent Any Remand Is Necessary, the Court Should Not Adopt the State's Invitation to Reject Protection of Coalition Districts Under the Voting Rights Act.

The State's final effort to avoid fair adjudication of the pending claims is a set of requests for "guidance" on remand that misstate the nature of the issues pending below. *See* State Br. 55-62. In particular, the State demands that this Court make certain pronouncements about the inapplicability of Sections 2 and Section 5 of the Voting Rights Act to coalition and crossover districts. *See id.* at 57-59. In the State's view, such districts – like Senate District 10 – simply are not protected at all under the Voting Rights Act. *See id.* at 22.[4] But this contention distorts the holding of *Bartlett v. Strickland*, 129 S. Ct. 1231 (2009). In *Bartlett*, this Court expressly reserved the question of whether coalition districts, in which minority voters coalesce to elect their candidates of choice, are cognizable under Section 2. *Id.* at 1242. Moreover, *Bartlett* held that, "if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." *Id.* at 1249. That is precisely one of the claims in this case.

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[4] Although the State argues that certain coalition districts created in the interim Congressional plan do not suffice for political cohesiveness under the *Gingles* factors, *see* State Br. 57-59, the State makes no such argument with respect to Senate District 10.

In accordance with this Court's statement in *Bartlett*, the D.C. District Court correctly held that "freedom from an obligation to *create* a crossover district under Section 2 does not equate to freedom to *ignore* the reality of an existing crossover district in which minority citizens are able to elect their chosen candidates under Section 5." Add. 46a-47a (emphasis in original). Yet, that is just what the State did in dismantling Senate District 10, and the lower courts should be free to adjudicate this issue.

Thus, to the extent this Court provides "guidance" to the Texas court on remand, it should reiterate that the Voting Rights Act prohibits a State from dismantling an effective crossover or coalition district in which minority citizens are able to elect their candidates of choice. That is not only consistent with this Court's decision in *Bartlett*, but also with longstanding Fifth Circuit precedent recognizing the viability of coalition districts as a protected method by which minority voters can elect candidates of choice. *See, e.g.*, *Campos v. City of Baytown*, 840 F.2d 1240, 1245 (5th Cir. 1988).

Though the United States as *amicus curiae* disagrees with Texas that coalition districts are unprotected under the Voting Rights Act, it partially supports the State's position that a remand may be in order for the Texas court to "lay a sufficient foundation for the use of coalition districts." United States Amicus Br. 32.[5] But it is unclear why the

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[5] The United States agrees with Appellees that no remand is necessary as to the Senate Plan and that the Texas court's

Texas court should be required to provide further explanation for drawing *any* coalition districts. It is curious, to say the least, that in a majority-minority state like Texas, majority-minority districts (including coalition districts) require some special justification whereas Anglo-majority districts do not. Such a position presumes that Anglo districts are the norm and anything else is the exception. But the demographics of Texas strongly suggest that no such presumption should apply. For this reason, the Texas court should not be required to provide any further explanation for its use of coalition districts in the interim plans.

CONCLUSION

The decision of the United States District Court for the Western District of Texas ordering into effect an interim district plan for the Texas Senate should be affirmed.

January 3, 2012

Respectfully submitted:

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order with respect to the Senate Plan should be affirmed. *See* United States Amicus Br. 30.

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Supplemental Appendix

EXHIBIT 32

Senate Redistricting Timeline - 2011

Senate Committee Action

5/10/11 - Notice given of hearing on Senate Redistricting to be held on 5/12 at 9am

- o Map finally released to the public after 5:00PM same day

5/12/11 – Hearing on Senate map

- o Insufficient public notice hampered effective public participation
- o Of the 32 people from the entire state who testified for or against the proposed map – 30 (94%) testified strongly against the proposed senate map
- o Chairman Seliger gave committee members a 5:00 PM deadline of 5/12 to submit any amendments to the map. This was done to purposefully limit any attempts to improve the map from a minority voting rights perspective and to limit the ability of minority voters and their elected representatives from effectively participating in the political process

5/13/11 – Redistricting Committee Meeting

- o No public participation or testimony was permitted
- o Committee passes the senate map over objections to SD 10 by every minority state senator

Senate Floor Action
5/16/11 - Bill placed on Senate Intent Calendar

5/17/11 - Bill taken up on Senate floor and voted out

- **Senator Davis offers 2 amendments as alternatives to District 10; both are tabled along party lines (19-12)**

5/17/11 - Bill is passed out of Senate, sent to the House, referred to House Redistricting Committee all in the same day

House Committee Action
5/18/11 – announcement from house floor that the redistricting committee will meet at 11:00 am that same day. This was inadequate notice of a hearing

5/18/11- House Redistricting Committee Convenes at 11:00 in the Agriculture Museum.

o **Committee meets in the Agriculture Museum, which unlike actual committee facilities has no video or audio recording capabilities, thereby denying public viewing or inspection of any maps.**

o **Chairman Solomon states that he does not want any amendments to the Senate map.**

o **African American Rep. Marc Veasey and Hispanic Rep. Roberto Alonzo offered amendments which would have remedied the significant retrogressive**

features in the proposed senate plan. Their amendments were rejected with all but one of the Members who represent effective minority districts voting in support of the Veasey and Alonzo amendments.

o Committee passes the Senate map without any amendments, again with all Members who represent effective minority districts voting no, except one. The lone minority member to support the plan was Representative Aaron Pena who switched parties to become a Republican AFTER the 2010 election, when he was re-elected as a Democrat.

House Floor Action

5/18/11 - Bill is considered in House Calendars Committee for placement on a House floor calendar

5/20/11 - Bill is placed on the House Major State Calendar

- This is the most important House calendar and takes precedence over other calendars

5/20/11 - Bill is brought up on the House floor and is voted out on second reading

- Rep. Alonzo offers amendment to create Hispanic opportunity district for Senate District 10; amendment is voted down along party lines (98-46)

- Rep. Martinez Fischer offers amendment to create minority opportunity districts in both SD 10 and SD 17 (Sen. Huffman); amendment is tabled along party lines (99-44)
- Rep. Veasey offers same amendment he offered in committee; Rep. Solomons (redistricting chair) moves to table; amendment is tabled along party lines (96-42)
- Rep. Veasey offers amendment which is alternative Senate map for the entire state; Rep. Solomons moves to table; amendment is tabled along party lines (98-44)
- Rep. Turner offers amendment on behalf of Legislative Black Caucus; amendment is tabled (Rep. Solomons' motion) along party lines (93-48)
- Bill is voted on 2nd reading along party lines (92-48)

5/21/11 - Bill is passed on 3rd reading along party lines (96-47)

REPLY BRIEF

Nos. 11-713, 11-714, 11-715

In the
Supreme Court of the United States

RICK PERRY IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.,
Appellants
v.
SHANNON PEREZ, ET AL.,
Appellees

On Appeal from the United States District Court for the Western District of Texas

JOINT APPELLEES' REPLY BRIEF AS TO INTERIM CONGRESSIONAL PLAN

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Texas Senate Journal for the Eighty-Second Legislature, First Called Session (June 6, 2011) at A-12, *available at* http://www.journals.senate.state.tx.us/sjrnl/821/pdf/82S106-06-FA.pdf 6

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Texas seeks to enlist this Court in its scheme to impose an illegal and racially discriminatory redistricting plan. To achieve this indefensible result, the State asks the Court to ignore the record, disregard statutory text, cast aside decades of precedent, and allow the State to pull a classic bait and switch by demanding a remedy it previously disclaimed. The Court should reject Texas's invitation.

The facts are stark. After a delayed and abbreviated legislative process that excluded minority citizens and representatives at every turn, Texas enacted a congressional redistricting plan that reduced minority political opportunity even though Texas is now a majority-minority state and the state's massive minority population growth was the reason Texas gained four seats in Congress. Texas then sought judicial rather than administrative preclearance and chose to seek summary judgment rather than trial. These tactical choices, combined with the many legal flaws in Texas's plan, left the State unable to gain preclearance before its election process started, forcing the Texas district court to adopt an interim plan for the 2012 election.

Texas concedes that—faced with impending elections under the State's own schedule and an insurmountable one-person, one-vote problem in the preexisting plan—the district court had to adopt an interim plan, but argues that the court erred in crafting its own plan because there was no legal violation to remedy in the enacted plan. But there was an obvious—indeed, undisputed—legal violation: the State's plan had not been precleared.

See, e.g., *Lopez v. Monterey Cnty.*, 519 U.S. 9, 20 (1996) ("No new voting practice is enforceable unless the covered jurisdiction has succeeded in obtaining preclearance."). This meant not only that the district court could not use the enacted map as an interim map, but also that Appellees were entitled to an injunction *prohibiting* its use pending preclearance. *Clark v. Roemer*, 500 U.S. 646, 652-53 (1991) ("If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes.").

Appellees alleged many other legal violations as well—including racial gerrymandering, intentional discrimination, and violations of Section 2 of the Voting Rights Act—but the district court was prohibited from ruling on those claims under this Court's precedent. *See, e.g.*, *Branch v. Smith*, 538 U.S. 254, 283 (2003) (Kennedy, J., concurring) ("Where state reapportionment enactments have not been precleared in accordance with § 5, the district court 'err[s] in deciding the constitutional challenges' to these acts.") (quoting *Connor v. Waller*, 421 U.S. 656, 656 (1975) (per curiam)); *Lopez*, 519 U.S. at 23 ("The three-judge district court may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate.").

Texas argues, however, that rather than following this Court's Section 5 precedent, the district court should have followed rules governing other requests for injunctive relief, "treating the legislative maps as the presumptive 'interim' maps and altering them only when necessary to remedy a likely statutory or constitutional violation." Texas

Br. at 27. But Texas elsewhere admits, as it must, that "Section 5 . . . reverses the normal rule that a duly-enacted law takes immediate effect by requiring [covered] jurisdictions to obtain preclearance before an enacted voting change may be enforced." *Id.* at 5. Here, at least, Texas is correct. *See, e.g.*, *Clark*, 500 U.S. at 652 ("A voting change in a covered jurisdiction 'will not be effective as la[w] until and unless cleared.'") (quoting *Connor*, 421 U.S. at 656). Once a plaintiff shows that a change has not been precleared, it must be enjoined without any further showing, and the court may not rule on other challenges to the plan until preclearance is obtained. *See, e.g.*, *Lopez*, 519 U.S. at 23.

Even if the district court had ignored this Court's instructions and followed Texas's proposed rule, the resulting map would have been no more like Texas's enacted map than is the interim map the court adopted. As explained in Appellees' opening briefs, Texas's enacted plan is rife with "likely violations of law," Texas Br. at 28, reflecting extreme racial gerrymandering, numerous Section 2 violations, and discriminatory purpose and effect in violation of Section 5. Indeed, though the district court was prohibited from ruling on these claims, its unanimous refusal to adopt Texas's enacted congressional map reflects, at a minimum, deep skepticism about the map's lawfulness—a skepticism steeped in two weeks of trial evidence.

Having enacted a discriminatory map and failed to obtain preclearance, Texas now asks this Court, Section 5 notwithstanding, to force implementation of its biased plan, demanding illegal and unconscionable relief. Texas's request is illegal because, as this Court has unanimously held, "where a court adopts a proposal 'reflecting

the policy choices . . . of the people [in a covered jurisdiction] . . . the preclearance requirement of the Voting Rights Act is applicable.'" *Lopez*, 519 U.S. at 22 (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981)). It is unconscionable because no court has yet had the opportunity to rule on the many legal flaws in Texas's plan beyond its failure to obtain preclearance. Those flaws are severe, and allowing even one election to proceed under an illegal, discriminatory plan would irreparably harm Texas voters. As Texas itself argued just a few weeks ago: "A special harm . . . arises when an election is permitted to go forward based on an unlawful redistricting plan." Emergency Application for Stay of Interlocutory Order Directing Implementation of Interim Texas Congressional Redistricting Plan Pending Appeal to the United States Supreme Court at 25, *Perry v. Perez*, No. 11A536 (Nov. 30, 2011) ("Congressional Stay App.").

Texas's request is also a bait and switch of the first order. In its stay application, Texas specifically disclaimed a request for wholesale adoption of its enacted plan, *id.* at 15, but Texas now urges the Court to do just that. Texas also claimed that a prompt ruling from this Court would allow for a remand to the district court, *id.* at 28-29, but Texas now says there is no time for that, even though the district court has since postponed Texas's primary election. Finally, Texas's request is inconsistent even with its own proposed legal rule; if it were not clear enough already, the D.C. district court's recent opinion denying summary judgment for Texas brought home again that Texas's enacted plan is full of "likely violations of law."

Given that Texas's plan is illegal and discriminatory, that the district court did precisely

what it has been instructed to do, and that even if the district court did what Texas requested, the resulting map would be little (if any) different, this Court should affirm. Alternatively, given that Texas has now reversed course on fundamental aspects of its stay application, this Court could simply vacate the stay, allow the case to proceed below, and review the district court's ruling on a normal schedule after final judgment. Texas has no right to ignore Section 5, nor to demand that this Court issue a rushed decision based on Texas's repeated misrepresentations.

II. ARGUMENT

A. Texas's "Facts" Ignore the Record

Texas's rosy description of its redistricting process makes for a compelling read, portraying a model of interracial collaboration and good faith effort aimed at common goals of fairness and inclusion. Like many great stories, however, it is largely imagined. Noticeably absent from the State's recounting of the legislative process is a single record citation. *See* Texas Br. at 7-10. The Court is left to take Texas at its word, despite the State's "long, well-documented history of discrimination." *LULAC v. Perry*, 548 U.S. 399, 439 (2006).

It is clear why Texas fails to cite the record, as even a cursory glance at the documented facts undermines Texas's claims. Contrary to the State's claim about a process that "featured . . . meetings with legislators from both houses, and included organizations that represent the interests of minority groups," Texas Br. at 8, the record reveals that not a single Hispanic or African-American legislator was allowed to participate in crafting

Texas's congressional districts. JA 709-12; Texas Senate Journal for the Eighty-Second Legislature, First Called Session (June 6, 2011) at A-12, *available at* http://www.journals.senate.state.tx.us/sjrnl/821/pdf/82S106-06-FA.pdf. While Texas vaguely asserts that legislative leaders "sought . . . input from the public and elected officials to ensure that the final plans fairly represented the relevant interests at stake," Texas Br. at 8, the process was characterized by minority legislators as "the least collaborative and most exclusive of any experienced," JA 518; *see also* Transcript of Bench Trial at 796-97, *Perez v. Perry*, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Sep. 8, 2011), and even independent counsel for the Senate Redistricting Committee testified that, in marked contrast to redistricting procedures followed in prior decades, the 2011 process left no time for debate and little opportunity for public deliberation, Testimony of Michael Morrison, Hearing of Senate Select Committee on Redistricting (June 3, 2011), *available at* http://www.senate.state.tx.us/75r/senate/commit/c625/c625.htm, at 4:51-52.

This inequitable and discriminatory process resulted in an inequitable and discriminatory congressional plan, which, among other things, dismantled several minority opportunity districts, *see, e.g.*, SA 33-34 (describing Texas's elimination of a crossover district in District 25); *id.* at 40-41 (describing Texas's reconfiguration of District 23 to render it a non-performing district), redrew district lines with no respect for minority members of Congress, *see* JA 769, 929-30, 932-33 (noting that every African-American member of the Texas congressional delegation as well as the Chair of the Congressional Hispanic Caucus had their district offices drawn out of their districts), and garnered criticism even from the State's own expert and

advisors, *see, e.g.*, JA 678 (State's expert testifying: "I would not have done what was done to the 23rd"); JA 981 (counsel to Republican congressional delegation noting that District 23 as enacted "put[s] a neon sign on it telling the court to redraw it"); JA 982-83 (district director to Rep. Joe Barton noting legal vulnerability of the enacted congressional plan due to its failure to acknowledge minority population growth in North Texas).

Tellingly, although Texas makes broad claims about its fair and inclusive redistricting process, its recounting of the procedures unique to the congressional plan is barebones compared to its description of the redistricting process for state legislative seats. While Texas asserts—without citation—that the redistricting committees conducted "proactive outreach" efforts to ensure participation from "interested parties" in formulating the House and Senate plans, including consultation with minority organizations and other "outside groups," Texas Br. at 8, 9, it does not even pretend such discussions occurred in the congressional redistricting process, *see id.* at 10. There is simply no way for Texas to conceal the secretive and discriminatory nature of the process by which it enacted the congressional plan. *See also Texas v. United States*, 1:11-cv-01303-RMC-TBG-BAH (D.D.C. Dec. 22, 2011), Dkt. No. 115 ("D.D.C. Op.") at 43 ("Texas has not disputed many of the Intervenors' specific allegations of discriminatory intent.").

Texas's depiction of its own diligence in seeking preclearance also falls short of the facts. Although Republicans dominated both houses of the Legislature and the governorship, eliminating the risk of partisan gridlock, and although the Legislature spent no time reaching out to minority

legislators or members of the public, the Legislature chose to wait until after the regular legislative session to so much as propose, much less pass, a congressional redistricting plan. The Governor waited almost another month before signing the bill. Texas then chose to pursue exclusively the slower route of judicial preclearance (foregoing the option of also seeking administrative preclearance) and to opt for summary judgment instead of accepting the D.C. district court's invitation to set a trial date to address the numerous factual issues raised by the Attorney General and intervenors, including whether the Legislature had engaged in intentional discrimination. JA 923; *see also* D.D.C. Op. at 42 ("Such an intensely fact-driven inquiry is typically difficult to resolve at the summary judgment stage.").

Texas raises a hue and cry that the court gave the Attorney General "the full 60 days" to file an answer, but Department of Justice regulations provide at least that much time for the Attorney General to gather the necessary facts and assess the voting change at issue before interposing an objection. *See* 28 C.F.R. § 51.9(a); *id.* § 51.39(a) (extending review period up to 120 days in certain circumstances). Texas further complains that the Attorney General and intervenors requested a short period of discovery to prepare for summary judgment briefing. Texas Br. at 12; *cf.* D.D.C. Op. at 3 ("The parties engaged in swift discovery[.]"). But Texas's gripes amount to nothing more than dissatisfaction with the ordinary rules of the judicial process. While administrative preclearance "'gives the covered State a rapid method of rendering a new state election law enforceable,'" *McCain v. Lybrand*, 465 U.S. 236, 247 (1984) (quoting *Allen v. State Bd. of Elections*, 393 U.S.

544, 549 (1969)), judicial preclearance necessarily allows for intervenors, *compare* 28 C.F.R. § 51.29 (allowing informal submission of comments to Attorney General as part of administrative preclearance process) *with* Fed. R. Civ. P. 24 (non-parties must file motions to intervene to participate in judicial action), discovery, *see* Fed. R. Civ. P. 26, and a less certain timeline. Texas can hardly complain about the delays inherent in litigation when it *chose* to incur those delays by foregoing the "'speedy alternative method of compliance.'" *McCain*, 465 U.S. at 246 (quoting *Morris v. Gressette*, 432 U.S. 491, 503 (1977)).

An unvarnished review of the record reveals an agenda-driven redistricting and preclearance procedure aimed at excluding minority voices, suppressing minority voting rights, and delaying federal review of the flawed congressional plan to avoid the inevitable—a resolution adverse to Texas.

B. Texas Ignores the Law

Texas's legal argument is most remarkable for what it does not include: in thirty pages of argument, the State never once quotes Section 5, the statute at the heart of this case. Texas also glosses over or ignores altogether countless decisions of this Court applying Section 5. It is only by ignoring these authorities that Texas can cobble together its argument. Much as it would like to, however, Texas cannot override this Court's decisions or Section 5. The law, as written by Congress and applied by this Court, should prevail.

1. Texas Ignores the Statute's Text

Texas's legal argument reads as though Section 5 of the Voting Rights Act were never

enacted. While Texas might prefer to live in such a world, Texas cannot nullify Section 5 merely by wishing it away.

Texas repeatedly claims that nothing in the Voting Rights Act's text addresses the situation here, because this case deals only with "interim" relief. Texas Br. at 5, 52. While Section 5 may never use the word "interim," however, it makes very clear that an unprecleared law, like Texas's redistricting plans here, cannot take effect, even on an interim basis.

Section 5 provides that whenever a covered jurisdiction "shall enact or seek to administer *any*" change in voting practices, the jurisdiction "may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such . . . [change] neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c(a) (emphasis added). "[U]nless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such" change. *Id.*

Texas would read an exception into the statute, arguing that once a state has applied for preclearance, it may administer a voting change on an interim basis unless a district court finds the plan illegal on other grounds. That is not what Section 5 says. The law requires preclearance of "any" change in voting practices, without exception. "Read naturally, the word 'any' has an expansive meaning," and where "Congress did not add any language limiting the breadth of that word, . . . we must read [the statute] as referring to all" of the items referenced. *United States v. Gonzales*, 520 U.S. 1, 5 (1997). Texas unwittingly concedes the

point, noting that: "For covered jurisdictions, like Texas, Section 5 'suspend[s] *all* changes in state election procedure' until they are 'submitted to and approved by a three-judge Federal District Court in Washington, D.C., or the Attorney General.'" Texas Br. at 5 (quoting *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504, 2509 (2009)) (emphasis added). There is no "interim" exception, even where the law is clearly nondiscriminatory or otherwise "innocuous." *See, e.g.*, *Nw. Austin*, 129 S. Ct. at 2511 ("Section 5 . . . suspend[s] *all* changes to state election law—however innocuous—until they have been precleared by federal authorities in Washington, D.C."); *Branch*, 538 U.S. at 262 ("The Act requires preclearance of *all* voting changes.").

2. Texas Ignores Section 5 Precedent

Because of the many flaws in Texas's argument, the State's position has morphed as the case has progressed and flaws have been exposed. In the district court, Texas asked the court simply to adopt "the Legislature's enacted plans." Texas Br. at 16. In its stay application, Texas argued that the district court should have drawn the congressional map to "narrowly address likely legal errors while respecting the lines actually drawn by the legislature wherever possible." Congressional Stay App. at 5. Now, Texas reverses course once again, first pushing for wholesale adoption of its enacted plan, but also proposing a new test, saying that the district court should have "treat[ed] the legislative maps as the presumptive 'interim' maps and alter[ed] them only when necessary to remedy a likely statutory or constitutional violation." Texas Br. at 27. None of these options can be reconciled with this Court's precedent.

Adopting Texas's plan was not an option open to the district court, and should not be considered by this Court. This Court has repeatedly and unanimously held that if a court adopts a covered jurisdiction's own proposal, even on an interim basis, the plan must obtain preclearance before taking effect. *See, e.g.*, *Lopez*, 519 U.S. at 22 ("[W]here a court adopts a proposal 'reflecting the policy choices . . . of the people [in a covered jurisdiction] . . . the preclearance requirement of the Voting Rights Act is applicable.'") (quoting *McDaniel*, 452 U.S. at 153) (alterations in original); *Abrams v. Johnson*, 521 U.S. 74, 95 (1997) (noting that preclearance requirement applies when a court adopts a "plan[] submitted to the court by the legislature of a covered jurisdiction"). Had the district court done what Texas asked, summary reversal would have been warranted.

Texas's alternative proposals fare no better. Texas now argues that a district court faced with an unprecleared redistricting plan and an impending election should "treat[] the legislative maps as the presumptive 'interim' maps and alter[] them only when necessary to remedy a likely statutory or constitutional violation." Texas Br. at 27. This Court has made very clear, however, that a district court presented with an unprecleared redistricting plan is not allowed to assess "likely statutory or constitutional violation[s]" in the plan. *Id.*

District courts lack jurisdiction to decide whether enacted plans comply with Section 5 because Congress gave "exclusive authority to pass on the discriminatory effect or purpose of an election change to the Attorney General and to the District Court for the District of Columbia." *Lopez*, 519 U.S. at 23; *see also United States v. Board of*

Supervisors of Warren County, 429 U.S. 642, 645 (1977) ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General—the determination whether a covered change does or does not have the purpose or effect of denying or abridging the right to vote on account of race or color.") (internal quotation marks and citation omitted).

Texas suggests that a district court may still conduct a "preliminary assessment" of Section 5 issues. Texas cites no case in support of this proposition, and there is none, for even a "preliminary assessment" would mean that the local district court—not the D.C. district court or Attorney General—would decide whether a change could take effect, precisely what Section 5 forbids. There are, unsurprisingly, many cases rejecting Texas's view. *See, e.g.*, *Lopez*, 519 U.S. at 23 ("On a complaint alleging failure to preclear election changes under § 5, that court lacks authority to consider the discriminatory purpose or nature of the changes."); *McDaniel*, 452 U.S. at 150 n.31 ("[A] District Court's conclusion that a reapportionment plan proposed by a covered jurisdiction complies with constitutional requirements is not a substitute for § 5 review.").

This Court has also repeatedly made clear that a district court should not address other legal challenges to a plan until preclearance is granted. *See, e.g.*, *Lopez*, 519 U.S. at 23 ("The three-judge district court may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate."); *McDaniel*, 452 U.S. at 150 n.31 (holding that "it was error for the

District Court to determine the constitutional validity of the county's plan . . . rather than limiting its inquiry . . . to the question whether the county had complied with § 5"); *Wise v. Lipscomb*, 437 U.S. 535, 542 (1978) ("[U]ntil clearance has been obtained," courts should not "address the constitutionality of the new measure."); *Connor*, 421 U.S. at 656 (holding that district court erred in considering racial discrimination claims as to Mississippi laws because "[t]hose Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5").

Texas again suggests that district courts may make preliminary assessments of these legal issues, but again cites no case supporting that approach. On the contrary, the cases cited above make clear that district courts should avoid ruling on other issues at all while preclearance is pending, for at least two reasons. First, such rulings are premature because "[t]he proposed changes are not capable of implementation, and the constitutional objections may be resolved through the preclearance process." *Branch*, 538 U.S. at 284 (Kennedy, J., concurring). Second, such rulings "force[] the federal courts to undertake unnecessary review of complex constitutional issues in advance of an Executive determination and so risk[] frustrating the mechanism established by the Voting Rights Act." *Id.*

Unable to respond to these authorities, Texas simply ignores them. Indeed, Texas never even attempts to explain how its proposed approach is reconcilable with Section 5's text or this Court's many cases explaining how a district court should proceed in this situation. This Court "will not overrule a precedent absent a 'special justification.'" *Harris v. United States*, 536 U.S.

545, 557 (2002) (quoting *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984)). Instead of demonstrating "special justification," Texas offers no justification at all.

While Texas never addresses the cases rejecting its approach, it does discuss one Section 5 case: *Upham v. Seamon*, 456 U.S. 37 (1982) (per curiam). As Appellees and the United States have already explained, however, *Upham* does not control here. The district court in *Upham* altered districts that the Attorney General had found compliant with Section 5. *Id.* at 40-41. Nothing remotely similar has occurred here. In the case at bar, the Attorney General and Intervenors challenge the entirety of Texas's congressional redistricting plan in the D.C. district court proceedings, that court has denied Texas's request for summary judgment and found that "Texas used an improper standard and/or methodology to determine which districts afford minority voters the ability to elect their candidates of choice," and "Texas has not disputed many of the Intervenors' specific allegations of discriminatory intent." D.D.C. Op. at 2, 43. Texas rests its entire argument on *Upham*, but *Upham* is inapposite.

3. Texas Requests a Novel Rule Based on Irrelevant Cases

While Texas largely ignores Section 5 and the cases applying it, the State spends a great deal of time arguing for a new rule based on preliminary injunction cases from other areas of law. Texas concedes that the district court's approach was "[c]onsistent with the customary practice under the VRA," Texas Br. at 2, but argues for a new rule: district courts should "treat[] the legislative maps as the presumptive 'interim' maps and alter[] them

only when necessary to remedy a likely statutory or constitutional violation." Texas Br. at 27. Texas's argument fails.

To begin with, the State's argument assumes that when a district court faces a situation like the one here—an unprecleared change in voting law and an upcoming election—the court should treat the law like it would any other state law a plaintiff seeks to enjoin. But as Texas concedes in its Statement of the Case, Section 5 "reverses the normal rule" that a law takes immediate effect and instead requires covered jurisdictions "to obtain preclearance before an enacted voting change may be enforced." Texas Br. at 5. "For covered jurisdictions, like Texas, Section 5 'suspend[s] all changes in state election procedure' until they are 'submitted to and approved by a three-judge Federal District Court in Washington, D.C., or the Attorney General.'" *Id.* (quoting *Nw. Austin*, 129 S. Ct. at 2509). Thus, a state law covered by Section 5 is not like other state laws, for it "will not be effective as la[w] until and unless cleared." *Clark*, 500 U.S. at 652 (internal quotation marks omitted).

Second, Texas labors under the misimpression that the district court erred because it redrew Texas's congressional districts "[w]ithout making any finding of an actual or likely violation of law." Texas Br. at 28. But the district court did find serious legal violations: the preexisting plan violated one-person, one-vote principles and had to be replaced, and Texas's enacted plan had not received preclearance. The latter violation required enjoining Texas's enacted plan without any further showing. *See, e.g.*, *Lopez*, 519 U.S. at 20 ("If a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the

change."); *Clark*, 500 U.S. at 652-53 ("If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes.").

These flaws in Texas's reasoning infect its whole argument. For example, Texas repeatedly claims that the district court should have started with its proposed plan, but the lack of "preclearance 'renders the [plan] unenforceable.'" *Clark*, 500 U.S. at 652 (quoting *Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982)). Thus, the district court properly started from the last legally enforceable plan, not Texas's enacted plan. *See, e.g., Abrams*, 521 U.S. at 96 (holding that a plan denied preclearance "could not operate as a benchmark").

Similarly, Texas repeatedly suggests that the district court was only authorized to alter districts in the enacted plan as to which it found a legal violation, and it found no violation here. But the relevant legal violation was lack of preclearance, not substantive violations of Section 2, the Constitution, or Section 5's retrogression standard. That violation required enjoining Texas's plan without any further showing. *See, e.g., Lopez*, 519 U.S. at 20; *Clark*, 500 U.S. at 652-53. And, as already explained, the district court was not allowed to make findings on any issues beyond whether Texas's plan had been precleared.

In short, while Texas has proposed a creative new approach to Section 5 cases, it is an approach that conflicts with Section 5's text and purpose, not to mention countless decisions of this Court. It could be the stuff of a law review article, or even legislative action, but it should not be the stuff of a Supreme Court opinion.

C. Texas Misrepresents the District Court Ruling and Proposes Illegal, Unconscionable, and Nonsensical Remedies

While the relief Texas seeks is plainly illegal under Section 5 and the Court's precedent, the district court's approach in this case was correct, and certainly within its equitable discretion. This Court should therefore affirm.

The Court should not, and under Section 5 cannot, mandate implementation of Texas's illegal, discriminatory, and unprecleared plan. Using Texas's plan despite these flaws "would place the burdens of inertia and litigation delay on those whom [Section 5] was intended to protect, despite their obvious diligence in seeking an adjudication of their rights prior to the election." *Lucas v. Townsend*, 486 U.S. 1301, 1305 (1988) (Kennedy, J., in chambers).

The Court also should not remand the congressional plan based on Texas's proposed "guidance" to the district court. Two of Texas's four proposals do not even relate to the congressional plan, and the other two amount to an attack on one district—District 33—based on a misrepresentation of what the district court actually said and did. Texas provides no meaningful guidance because no precedent supports its claim that the district court erred.

Finally, if the Court believes affirmance inappropriate for any reason, it should simply vacate the stay, allow the case to proceed to final judgment, and review the district court's decision then. Texas misrepresented the facts, the district court decision, and its proposed remedies in its stay

application, and the Court should not reward this behavior by rushing to grant Texas relief from its own misguided tactical choices. The protections contained in the Voting Rights Act and the Constitution deserve better than a rushed decision reversing decades of this Court's precedent.

1. The District Court Did What It Was Supposed To Do

The district court did exactly what it was required to—nothing more, nothing less. Contrary to Texas's contention that the district court drew congressional districts "from scratch," gave no deference to the Legislature's enacted plan, and engaged in an "essentially standardless exercise," Texas Br. at 33, 39, the district court's 17-page order clearly establishes its restrained approach: (1) start from Texas's last precleared map; (2) incorporate the new districts and correct population imbalances to comply with one-person, one-vote principles; (3) preserve benchmark minority opportunity districts so as not to violate Section 5; (4) minimize split voting tabulation districts ("VTDs") to allow for quick implementation of the interim plan; and (5) "utilize[] portions of the enacted map where it could do so," JA 150. The State's misrepresentation of the district court's plan is itself "fundamentally unmoored" from any reasonable reading of the Congressional Order. Reply in Support of Emergency Application for Stay of Interlocutory Order Directing Implementation of Interim Congressional Redistricting Plan at 6, *Perry v. Perez*, No. 11A536 (Dec. 5, 2011) ("Congressional Stay Reply").

As already explained, the district court could not adopt Texas's proposed plan or use it as the benchmark because it had not received Section 5

approval. *See, e.g.*, *Lopez*, 519 U.S. at 22; *Abrams*, 521 U.S. at 96; *Clark*, 500 U.S. at 652. Instead, the district court started from the precleared benchmark plan and began by making the changes necessary to comply with one-person, one-vote requirements. JA 139. In making these changes, the district court recognized that it could not itself violate Section 5 by causing "retrogression in [minority] voting strength," so it maintained districts in the benchmark plan that allowed minority voters to elect their candidates of choice. JA 138-39 (quoting *Abrams*, 521 U.S. at 96 ("[I]n fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases.")). Starting from the last precleared plan and preserving existing minority opportunity districts explains much of the difference between the interim map and Texas's enacted map. *See, e.g.*, JA 140 (describing the "difference between the Court's plan and the enacted plan" as primarily "attributable to maintaining district 29 as in the benchmark to avoid retrogression and maintain the status quo").

In addition to complying with Section 5, the district court had to minimize split VTDs in the interim map because the "evidence at trial and in the interim plan hearing" made "clear that cutting VTDs would create enormous administrative and financial difficulties for local governments preparing for an election at the eleventh hour." JA 102; *see also Vera v. Bush*, 933 F. Supp. 1341, 1347 (S.D. Tex. 1996) (discussing the problems with split VTDs). Avoiding split VTDs led to many (often small) variations from Texas's proposed plan (which split over 400 VTDs), but the "practical realities" inherent to the district court's task required these changes. JA 90. Thus, it is

disingenuous for Texas to gripe that the "interim congressional plan alters the boundaries of *every single one* of the 36 congressional districts," Texas Br. at 22; many of these changes were minor and merely reflected the need for the interim plan to be implemented quickly. Texas's argument is especially misguided because these changes would have been required even if the court had otherwise adopted Texas's enacted congressional map. JA 103 ("[E]ven if the Court was required to give *Upham* deference to the interim maps, the Court would still have needed to make the changes to the uncontested districts to correct cuts in the VTDs that would have impeded implementation of the plan under intense time constraints."); JA 90 ("[T]he Court's obligation to ensure that the interim map does not contain split VTDs so that it is capable of being implemented under severe time constraints . . . prevents the Court from adopting even the unchallenged districts from the enacted plan wholesale.").

Though the district court could not adopt Texas's proposed map for the reasons already stated, it "gave as much consideration to the State's enacted map as possible." JA 90. Indeed, "after maintaining current minority districts and adding in the new districts, [the district court] inserted a number of districts with minimal change from the enacted plan where possible." JA 147. As a result, in the interim plan:

> District 1 has a 97.2% population overlap with district 1 in the enacted plan. District 3 has a 97.8% population overlap with the enacted plan. District 4 has a 96.5% population overlap with the enacted plan. District 5 has a 94% population

> overlap with the enacted plan. District 8 has a 92.7% population overlap with the enacted plan. District 11 has a 96.7% population overlap with the enacted plan. District 13 has a 98.6% population overlap with the enacted plan. District 14 has a 97.2% overlap with the enacted plan. District 19 has a 99.2% population overlap with the enacted plan.

JA 147-48 n.30; *see also* JA 140 (district court drew "districts 2, 22, and 14 similar to the enacted plan"); *id.* at 142 (district court drew District 35 "consistent with the Legislature's choice to create a new Latino opportunity district and with its general choice of location in the enacted plan"). These substantial areas of overlap refute Texas's repeated claims that the district court "disregard[ed]" the enacted map. *See, e.g.*, Texas Br. at 18, 23, 33. On the contrary, the court "deferred" to Texas's map where it could without risking a violation of Section 5. Even the dissent below initially joined in proposing the interim congressional plan and called it "an honest and diligent effort to achieve what an interim plan should do." JA 151.

Comparing the interim congressional map to the interim state Senate map further confirms that the district court deferred to the enacted plans where it could. In the Section 5 proceedings as to Texas's state Senate plan, only one district was challenged as violating Section 5. JA 407. Therefore, with that map, the district court "maintain[ed] the status quo from the benchmark plan" with regard to the single challenged Senate district "but otherwise [used] the enacted map as much as possible." JA 408. Here, by contrast, every

part of Texas's congressional redistricting plan has been challenged in the Section 5 proceeding. *See, e.g.*, JA 94 (confirming that the Attorney General's challenges were not "limited to any particular district or districts" (internal quotation marks omitted)); *see also* JA 95 ("The intervenors also assert that while certain districts exhibit characteristics that are indicative of discriminatory purpose, they are challenging the plans in their entirety."). There was thus no basis for *Upham* deference to any part of Texas's plan here. The difference in the district court's approaches to the two plans illustrates the court's understanding of Section 5 and this Court's precedents and its efforts to defer to Texas's policy choices wherever these authorities allowed it to do so. It also confirms that in adopting an interim congressional map, the district court carefully complied with the law.

In short, the district court followed this Court's guidance in implementing an interim congressional plan. Its decision should be affirmed.

2. This Court Cannot Adopt Texas's Plan

Texas now asks this Court to order the use of its unprecleared, illegal, and discriminatory plan. That would be an error of historic dimensions.

This Court has repeatedly held that courts cannot order even interim use of a state's unprecleared voting change. *See, e.g.*, *Lopez*, 519 U.S. at 22; *McDaniel*, 452 U.S. at 153. This is the correct rule because allowing an unprecleared change to take effect not only violates the plain language of Section 5, but also would place the burdens of delay on those whom the statute was intended to protect. *Lucas*, 486 U.S. at 1305

(Kennedy, J., in chambers). This Court should not reverse course and exempt Texas from its precedent and Section 5's text.

Such an order would be especially inappropriate here because of the many illegally discriminatory aspects of Texas's plan, aspects that do not merit this Court's stamp of approval. Texas asks the Court to impose a plan in which the State has again manipulated District 23 in virtually the same way this Court rejected just five years ago. Yet again, "the State took away the Latinos' opportunity because Latinos were about to exercise it," which "bears the mark of intentional discrimination." *LULAC*, 548 U.S. at 440. Texas asks the Court to impose a plan in which Texas intentionally dismantled an acknowledged crossover district in District 25, ignoring this Court's statement that if "a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." *Bartlett*, 129 S. Ct. at 1249. Texas asks the Court to approve the State's racial gerrymandering efforts in Districts 12 and 26.

Texas Congressional District 12
(as passed by the 2011 Texas Legislature (Plan C100))

Quite simply, adopting Texas's enacted plan, even on an interim basis, would not only violate this Court's longstanding precedent, it would force upon Texas voters an illegally discriminatory plan.

Against this precedent, statutory text, and legally flawed plan, Texas offers a misreading of one federal regulation, arguing that 28 C.F.R. § 51.18(d) allows courts to authorize interim use of unprecleared plans. Again, however, Texas ignores the text. 28 C.F.R. § 51.18(d) provides that "[a] Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of that practice not explicitly authorized by the court."

Thus, § 51.18(d) does not tell courts when they may allow emergency use of a plan without preclearance, it merely specifies that if a court does so, that plan still has to be precleared for any other use. It is this Court's decisions—not the C.F.R.—that specify when emergency interim use might be allowed, and it is a standard nowhere near met here: "'An extreme circumstance might be present if a seat's unprecleared status is not drawn to the attention of the [covered jurisdiction] until the eve of the election and there are equitable principles that justify allowing the election to proceed.'" *Lopez*, 519 U.S. at 21 (quoting *Clark*, 500 U.S. at 654-55) (alterations in original). The Court has yet to find such circumstances present, and they certainly are not present here, where Texas has long been aware of the need to preclear its redistricting plans and the district court has already adopted an interim plan to be used pending preclearance.

It is also worth noting that even in the case on which Texas rests much of its argument, *Upham*, this Court did not simply adopt the State's proposed plan even after summarily reversing the district court. There, even though the Attorney General had affirmatively found the districts at issue compliant with Section 5 and there were no other pending challenges to those districts—important factors in favor of an enacted plan not present here—this Court remanded to the district court for it to decide how to proceed, saying: "Although the District Court erred, it does not necessarily follow that its plan should not serve as an interim plan governing the forthcoming congressional elections." *Upham*, 456 U.S. at 44. Because the district court was more familiar with the pending election deadlines "and the legal and practical factors" relevant to choosing an interim

plan, this Court simply "vacate[d] the District Court judgment and remand[ed] the case to that court for further proceedings." *Id.* The Court certainly should not grant greater relief here, where serious legal challenges to Texas's proposed plan remain pending in the district court and even the dissent below was unwilling to adopt Texas's proposed plan in light of its legal flaws. Indeed, even a "precleared plan is not owed *Upham* deference to the extent the plan subordinated traditional districting principles to racial considerations," as here. *Abrams*, 521 U.S. at 85. "*Upham* called on courts to correct—not follow—constitutional defects in districting plans." *Id.*

In short, countless cases reject Texas's proposed approach, and none support it. There is no basis for the Court to override Section 5's text and decades of precedent by implementing Texas's illegal, discriminatory plan. And even if Texas were correct that there is no time for remand, the Court would have to choose between two options: (1) adopt the enacted plans, which necessarily violate Section 5 and likely violate Section 2 and the Constitution; or (2) affirm the interim plans drawn by a neutral court based on a logical reading of this Court's precedent, the benchmark plan, and (where possible) the enacted plan. The choice is clear. Even if the Court disagrees with the second option for whatever reason, the best option left would be, as explained below, to vacate the stay and allow the case to proceed to final judgment below.

3. Texas's Proposed "Guidance" On Remand Provides No Guidance

In the alternative, Texas asks the Court to remand and offer "guidance in at least four respects" to the district court. Texas Br. at 56. But

Texas's proposed "guidance" has little bearing on the interim congressional plan, amounting to an attack on only one district—District 33. Even there, however, Texas can identify no legal violation in the district court's approach, as neutral redistricting principles and minority population growth were what led to the district court's creation of a district that happened to be majority-minority. If every new district that happens to be majority-minority constituted an illegal "flaw" in a reapportionment plan, it would be impossible to attain a society in which "citizens of all races have equal opportunity to share and participate in our democratic processes and traditions." *Bartlett*, 129 S. Ct. at 1249 (plurality op.). Texas's inability to articulate a standard on remand that would necessitate redrawing any congressional districts confirms that the district court got it right the first time.

Two of Texas's proposed points of guidance—regarding the Texas Constitution's "county-line rule" and population equality across legislative districts—have no bearing whatsoever on the congressional plan. *See* Tex. Const. art. III, § 26; Texas Br. at 60, 61. They thus obviously provide no basis for remanding that plan and will not be addressed here.

Though Texas fails to acknowledge the limited scope of its other two points of "guidance," they only affect a single district in the district court's interim congressional plan—District 33. Texas's first point of guidance attacks District 33 by name as an improper effort to achieve proportional racial representation. Texas Br. at 56-57. Its next point of guidance suggests that the district court improperly created a coalition district "[i]n addition to District 33." *Id.* at 57. Texas never

specifies what district this is, but its description of the district—as a "new congressional district in North Texas in which African-Americans (29.1%), Latinos (21%), and Asians (6%) constitute a combined majority of the voting-age citizens," *id.*—makes plain that it is again referring to District 33, for no other district remotely approximates this description. *See* Plan C220, Red 106 Report, *available at* http://www.tlc.state.tx.us/redist/redist.htm (District 33's citizen voting-age population is 29.1% African-American, 21.1% Hispanic, and 4.0% Asian).

Texas not only misleads the Court about the scope of its attack on the interim congressional plan, it also attempts to mislead the Court about what the district court actually did. The district court made clear that interim District 33 ended up as a majority-minority district in the interim plan "[b]ecause much of the growth that occurred in the Dallas-Forth Worth metroplex was attributable to minorities." JA 146-47. In other words, because the population growth in that area was overwhelmingly comprised of minorities—with the Hispanic population jumping by 440,898, the African-American population growing by 152,825, and the Anglo population falling by 156,742, U.S. Census Bureau, http://factfinder.census.gov—interim District 33 includes a high percentage of minorities. The district court's explanation is simple.

Bizarrely, Texas concludes from the district court's description of District 33 that "[t]he court apparently believed that Texas had an obligation to draw a certain number of minority opportunity districts in proportion to each racial group's share of the increase in population." Texas Br. at 56. Texas then launches into a legal argument against proportional representation and demands that this

Court instruct the district court that it "may not alter the legislatively enacted districting plan based on proportional-representation concerns or to maximize minority voting strength." *Id.* at 57. Texas's misinterpretation of the plain language of the district court's order is striking. Refusing to take the district court's description at face value—i.e., that large minority population growth naturally yielded a district with a large percentage of minorities—Texas invents a hidden motive on behalf of the district court. Texas thus demands that its own actions receive a presumption of "good faith," *id.* at 27, while refusing to give that same presumption to the district court.

Texas similarly attacks District 33 on the basis that Section 2 of the Voting Rights Act does not require the creation of a coalition district. But the district court never said or even implied that it based the shape of District 33 on Section 2 concerns. And Texas certainly cannot point to authority *prohibiting* creation of a majority-minority district where it results from neutral redistricting principles.

At bottom, Texas's criticism of District 33 rests on the assumption that any time a minority opportunity district is created, the underlying reason must be race-conscious line-drawing that is either intended to remedy a legal violation or presumed unconstitutional. *See, e.g.*, Texas Br. at 45 ("Here, the district court clearly took race into account in drawing its interim maps. In particular, the court deliberately created a number of 'coalition' districts . . . . In the absence of some finding that creation of those race-based districts was absolutely necessary to correct an actual or likely violation of law, the district court's actions were not only improper but unconstitutional."). The

corresponding assumption is that Anglo-dominated districts are necessarily race neutral and, therefore, presumed constitutional. According to Texas, this assumption remains in effect even where the minority population in an area outnumbers the Anglo population. That simply cannot be the law. Indeed, Texas's presumption that any district in which minorities are a majority is inherently suspect says more about its own discriminatory motives than it does about the legality of the interim congressional plan.

The United States, in an analysis that otherwise confirms the wrongheadedness of Texas's approach, also misapprehends the basis of interim District 33. The United States accurately points out that "the district court made no findings establishing that the conditions for treating minorities as a single coalition have been met." Brief for the United States as Amicus Curiae Supporting Affirmance in Part and Vacatur in Part at 33, *Perry v. Perez*, Nos. 11-713, 11-714 and 11-715 (Dec. 28, 2011) ("U.S. Br."). But rather than accepting the district court's explanation of interim District 33 at face value, the United States generally asserts that "insofar as the district court ordered coalition districts for the purpose of complying with Section 2 or Section 5—rather than simply drawing a district based on population growth that happens to be multiethnic—its analysis is inadequate." *Id.* While this general proposition may be true, it has no bearing on interim congressional District 33, which, as the district court explained, *was* "simply draw[n] . . . based on population growth that happens to be multiethnic." *See* JA 146-47. At no point did the district court indicate it drew District 33 in an effort to comply with Section 2 or Section 5 of the Voting Rights Act. Indeed, where compliance with

the Act drove the district court's decisions, it clearly said so. *See, e.g.*, JA 139 ("[T]o comply with Section 5 by ensuring that no minority voters suffer a retrogression in their voting strength as compared to the benchmark . . . , the Court aimed to maintain the current minority opportunity districts from the benchmark plan."); JA 144-45 n.24 ("In keeping with the goals of maintaining the status quo and complying with Section 5 in drawing this map, the Court has preserved District 25 as a crossover district."). Rather, the district court made clear that the minority coalition district found in interim District 33 resulted solely from the substantial minority population growth in that area. JA 146-47. A remand requiring the district court to reiterate the same would only result in further delay, yielding no change in the interim congressional plan.*

In fact, had the district court adopted Texas's approach to District 33 and the Dallas-Fort Worth area, it would have amounted to an

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* The United States also says that "the district court appears to have concluded that Section 5 required at least two of Texas's four new districts to be ability-to-elect districts," and that greater explanation is required as to these districts. U.S. Br. at 31. But one of those new districts is District 33, which, as already explained, was not created to comply with Section 5, but rather because of neutral redistricting principles and minority population growth. And the other new majority-minority district—District 35—was also not created based on Section 5 concerns. Rather, as the district court explained, interim District 35 was an example of where the court largely deferred to the State's proposed plan, drawing District 35 "consistent with the Legislature's choice to create a new Latino opportunity district and with its general choice of location in the enacted plan." JA 142. Thus, the United States' critique also provides no reason to remand.

unconstitutional racial gerrymander, as the court would have had to draw contorted district boundaries in order to *avoid* creating a majority-minority district given the new minority population in North Texas. Texas's enacted District 33, which is overwhelmingly Anglo, snakes around Tarrant County, heading west and north into rural areas, avoiding the urban areas where the bulk of the state's population growth occurred. *See* JA 146 ("The fourth new district—district 33—was drawn in the Dallas-Fort Worth metroplex to reflect population growth in that area. That is also generally where the Legislature added its new district 33, but the Court's new district 33 is more compact and located within Tarrant County, where the growth in urban population occurred."). Part of enacted District 33's looping move westward through Tarrant County is to accommodate enacted District 26, the Anglo-dominated district which extends a "lightning bolt" into the heart of Tarrant County and the City of Fort Worth to carve out several of the most significant concentrations of minority population in the area. *See* Jt. Appellees' Br. as to Congressional Plan at 12-13. The district court aimed to create interim District 33 in the same general vicinity as enacted District 33, JA 146, but it did not—and legally could not—include the Legislature's race-based lightning bolt. Instead, since much of the growth in the Dallas-Fort Worth area was attributable to minority population growth, the court adhered to neutral principles to create a minority coalition district.

Finally, although Texas's stay application attacked multiple districts in the interim congressional plan, *see, e.g.*, Congressional Stay App. at 21-24, Texas's proposed "guidance" upon remand challenges only a single congressional district—and that, too, based on a misreading of

the district court's order. Noticeably absent from Texas's opening brief is any mention of interim Districts 23 and 27. *Compare* Congressional Stay App. at 21-23. While Texas does mention interim District 25 as part of its general claim that the interim plan "disregards innumerable policy choices," including the State's choice to dismantle a crossover district, Texas Br. at 23-24, the State offers no guidance on remand on how to redraw the district to cure any alleged legal violation.

The State's inability to explain why these districts should be modified confirms that the district court made no legal error in drawing the interim districts. Moreover, it indicates that even under Texas's novel standard, these districts could not be adopted from Texas's plan because of the many "likely violation[s] of law" in Texas's approach to these districts. Indeed, as to District 25, the D.C. district court has confirmed that Texas violated Section 5 if—as the State has already conceded multiple times, *see, e.g.*, *Perez v. Perry*, No. SA:11-cv-00360-OLG-JES-XR, Dkt. No. 457 (W.D. Tex. Oct. 21, 2011) at 18 & n.9; Congressional Stay App. at 24 & n.14; Texas Br. at 23-24—it eliminated a viable crossover district. *See* D.D.C. Op. at 36 ("[F]reedom from an obligation to create a crossover district under Section 2 does not equate to freedom to *ignore* the reality of an existing crossover district in which minority citizens are able to elect their chosen candidates under Section 5. Since coalition and crossover districts provide minority groups the ability to elect a preferred candidate, they must be recognized as ability districts in a Section 5 analysis of a benchmark plan."); *see also Bartlett*, 129 S. Ct. at 1249 (plurality op.) ("[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that

would raise serious questions under both the Fourteenth and Fifteenth Amendments.").

In short, Texas irrationally clings to its baseless claim that the Court should adopt the enacted plan despite its legal flaws and lack of preclearance. But once that argument falls away, Texas can only feebly challenge a single congressional district in the interim plan. Despite its best efforts, even Texas has failed to devise a standard that would redraw any portion—let alone a substantial portion—of the interim congressional plan. The district court can hardly be said to have committed legal error where Texas can point to no viable remedy on remand.

4. Texas Has Pulled a Bait and Switch

Texas's stay application was premised on several claims it has now abandoned or conceded were wrong. Given that the State's justifications for a stay have now fallen away, and that simply adopting Texas's plan is neither a legal nor a conscionable alternative, the Court—if it chooses not to affirm—should simply vacate the stay, allow the case to proceed to final judgment below, and review the case on appeal in the ordinary course.

Texas's misrepresentations began with the relief it was seeking. In its stay application, Texas specifically disclaimed a request "that its entire plan be adopted wholesale." Congressional Stay App. at 15. Instead, Texas claimed that a prompt ruling from this Court would allow for a remand to the district court. *Id.* at 28-29. Now, however, even though the district court has since postponed Texas's primary election, Texas says there is no

time to remand, so its map must be adopted as is. Texas Br. at 54.

In its stay application, Texas also exaggerated the scope of the alleged flaws in the district court's approach. Texas's stay application specifically attacked five districts in the interim congressional plan: Districts 23, 25, 27, 33, and 35. Congressional Stay App. at 17-24. Here, however, Texas's proposed "guidance" on remand quibbles only with District 33. *See* supra. The reason? Texas realizes that even under its proposed standard—in which the district court would modify districts only after finding "likely violations of law," Texas Br. at 28—none of these districts could have survived as enacted. As explained in our opening brief, Texas's enacted District 23 amounted to a racial gerrymander designed to eliminate a Latino opportunity district, *see LULAC*, 548 U.S. at 440, its enacted District 27 had both the intent and effect of reducing Latino political opportunity in Texas, and its enacted District 35 was based on destroying prior District 25, a district the state acknowledged as a performing crossover district in which minority voters were able to elect their candidate of choice. *See Bartlett*, 129 S. Ct. at 1249 (holding that if "a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments"); D.D.C. Op. at 36 (finding that Texas violated Section 5 if, as the State has already conceded, District 25 was a performing crossover district). And, as already explained, Texas's attack on interim District 33 is baseless, relying on an inaccurate description of the district court's opinion and a troubling view that majority-minority districts can never be justified unless required by law, even where the majority of the population of

an area is composed of racial minorities. More generally, Texas also now concedes that, contrary to its earlier claim that the district court's approach was "fundamentally unmoored" from "any properly constrained judicial inquiry," Congressional Stay Reply at 6, in reality the district court's approach was "[c]onsistent with the customary practice under the VRA," Texas Br. at 2, and it is Texas that seeks invention of a new rule.

Despite these misrepresentations in its stay application, Texas now asks this Court to override Section 5's text and decades of precedent by ordering into effect Texas's unprecleared, discriminatory plan. Alternatively, Texas asks this Court to develop, within just weeks of hearing argument in this case, a new "likely-violations-of-law" approach to Section 5 cases, breaking from decades of precedent. The Court should follow neither approach. If the Court would prefer not to affirm for any reason, the best approach would be to vacate the stay, allow the case to proceed to final judgment below, and then review the district court's decision in the ordinary course. That approach would clarify and likely narrow the issues in the case, would give the Court time to consider whether and how it might wish to provide additional guidance to district courts facing the difficult situation the district court faced here, and would ensure that the Court does not order into effect a map that violates the Constitution and Voting Rights Act.

III. CONCLUSION

As this Court well knows, "Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate

otherwise in the electoral process." *LULAC*, 548 U.S. at 439. Texas's 2011 congressional redistricting plan unfortunately continued that tradition, confirming that "[m]uch remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes." *Bartlett*, 129 S. Ct. at 1249 (plurality op.). Texas now seeks to make this Court a part of its discriminatory endeavor, asking the Court to ignore Section 5's text and decades of precedent and order into effect its unprecleared, illegal plan. That approach cannot be allowed, for it "would place the burdens of inertia and litigation delay on those whom [Section 5] was intended to protect, despite their obvious diligence in seeking an adjudication of their rights prior to the election." *Lucas*, 486 U.S. at 1305 (1988) (Kennedy, J., in chambers). The Court should either affirm the district court's interim congressional plan or vacate the stay.

Respectfully submitted,

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REPLY BRIEF

Nos. 11-713, 11-714 and 11-715

In The Supreme Court of The United States

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, *ET AL.*,

Appellants,

v.

SHANNON PEREZ, *ET AL.*,

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, *ET AL.*,

Appellants,

v.

WENDY DAVIS, *ET AL.*,

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, *ET AL.*,

Appellants,

v.

SHANNON PEREZ, *ET AL.*,

Appellees.

On Appeal from the United States District Court for the Western District of Texas

REPLY BRIEF FOR APPELLEES TEXAS LATINO REDISTRICTING TASK FORCE, TEXAS MEXICAN AMERICAN LEGISLATIVE CAUCUS AND SHANNON PEREZ, *ET AL.*

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REPLY BRIEF FOR APPELEES TEXAS LATINO REDISTRICTING TASK FORCE, TEXAS MEXICAN AMERICAN LEGISLATIVE CAUCUS, AND SHANNON PEREZ, *ET AL.*

INTRODUCTION

The Voting Rights Act could not be clearer: "No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment" preclearing a voting change. 42 U.S.C. § 1973l(b). Just as clearly, the Act squarely provides that "unless and until" the D.D.C. "enters" a declaratory judgment — or this Court reverses its refusal to do so, *see, e.g.*, *Georgia v. Ashcroft*, 539 U.S. 461 (2003) — Texas cannot "administer" its new districting map. 42 U.S.C. § 1973c(a).

In *Texas v. United States*, the three-judge court statutorily assigned the exclusive authority to pass on Texas's preclearance request squarely refused to issue that judgment without further proceedings. After noting that "Texas has not disputed many of the . . . specific allegations of discriminatory intent" that the defendants in that proceeding had presented, Addendum at 56A, the three-judge court in the D.D.C. unanimously concluded that it needed to conduct "further review of the claims of discriminatory purpose directed to all three Plans." *Id.*

The preclearance panel's holding that Texas has so far "failed to demonstrate that the Plans do

not have the purpose of 'denying or abridging the right to vote on account of race or color, or [membership in a language minority group],' Addendum at 52A, should be the end of this appeal. The State itself acknowledged in its opening brief that it would be entitled to the relief it seeks "only after" it "demonstrates a likelihood of success on the merits." Br. for Appellants at 28, *Perry v. Perez*, Nos. 11-713, 11-714, and 11-715 (Dec. 21, 2011) [hereinafter "Appellants' Br."]. The preclearance panel — the only court with subject-matter jurisdiction over the question whether the State's plans should be precleared — has decided that the State has not made such a demonstration. That decision is not now before this Court. Indeed, the United States — the required defendant in that proceeding — is not even a party to this case.

Texas has not appealed from the preclearance panel's holding that "genuine issues of material fact regarding whether the [State's] Plans were enacted with discriminatory intent" preclude preclearance on the current record. Addendum at 54A. Nor, indeed, can it. *See Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 40-41 (1995) (explaining that denials of motions for summary judgment are not ordinarily appealable). Instead, Texas seeks an end-run around the entire preclearance process by asking this Court to "impose Texas' legislatively enacted plan as the interim plan while preclearance is pending." Appellants' Br. at 54-55.

That unprecedented request — Texas points to not a single example of a court ever having so

acted — flouts the plain text and purpose of section 5. Indeed, as appellees explained in our opening brief, an unbroken line of this Court's precedents establishes that Texas cannot circumvent section 5 by getting a federal court to adopt its plan in the guise of a "judicial plan." *See* Br. for Appellees Texas Latino Redistricting Task Force, *et al.* at 44-45, *Perry v. Perez*, Nos. 11-713, 11-714, and 11-715 (Dec. 21, 2011) [hereinafter "Appellees' Opening Br."]. That is true regardless of whether the plan is adopted for one election cycle or for all five before the next census.

ARGUMENT

Just as the local three-judge district court in this case properly rejected Texas's attempt to rewrite the Voting Rights Act, so too should this Court.

As appellees explained in our opening brief, the three-judge court in the Western District of Texas was required to enjoin Texas's use of unprecleared redistricting plans and was required to draw interim maps. *See* Appellees' Opening Br. at 36-43. In drawing those interim maps, while the three-judge court was required to defer to *precleared* state policy judgments — those, for example, reflected by the benchmark plans — it was foreclosed from deferring to unprecleared state policy judgments. It is telling that the State challenges only a handful of the districts drawn by the three-judge court. It is even more telling that those districts are the ones the three-judge court drew to avoid retrogression, to comply with one-

person, one vote, and to provide minority voters with their federally protected equal opportunity to participate and elect candidates of their choice.

I. Any Delays Texas Has Experienced In Obtaining Preclearance Are The State's Own Fault And Are Due To Its Adoption Of Plans That Dilute Latino Voting Strength

Much of the State's opening brief is devoted to its claim that it is somehow entitled to interim preclearance by this Court because the process is taking too long. *See* Appellants' Br. at 2, 29, 46-48. That claim is entirely meritless. To the contrary, the State has been unable to obtain preclearance because it has dragged its feet in seeking approval of discriminatory plans.

1. States that want swift preclearance determinations can get them. The vast majority of states choose the administrative route, with its strictly limited time period. *See* Appellees' Opening Br. at 19. That route gives states certainty that they will obtain a determination within sixty (or at most, 120) days of submission. *See* 28 C.F.R. § 51.37. This time around, Alabama, Alaska, California, Georgia, Louisiana, North Carolina, South Carolina, South Dakota, and Virginia have already chosen this route. *See* Br. of the United States as *Amicus Curiae* Supporting Affirmance in Part and Vacatur in Part at 1a-3a, *Perry v. Perez*, Nos. 11-713, 11-714, and 11-715 (Dec. 28, 2011) [hereinafter "Amicus Br. of the United States"]. Alabama, Alaska, Georgia,

Louisiana, North Carolina, South Carolina, and Virginia have all received preclearance and can implement their plans. *See id.*[1] Their experience shows both that it is possible for states to draw plans that comply with section 5's substantive requirements and that the administrative preclearance process is working efficiently. If Texas had really wanted a quick determination about the purpose and effect of its 2011 plans, it could have obtained one.

But a swift section 5 determination is a two-edged sword. For covered jurisdictions that have avoided retrogression and purposeful discrimination, administrative preclearance has only an upside: within a few months of submission, the jurisdiction receives a green light to use its new maps. But for covered jurisdictions that have retrogressed, or purposefully discriminated against minority voters, administrative preclearance is deeply unattractive: once the Attorney General has interposed an objection, the new plan is clearly unusable, unless and until the jurisdiction obtains a declaratory judgment from the D.D.C. 42 U.S.C. § 1973c(a). And because the administrative objection must be interposed swiftly, it will almost certainly prevent using the new plans in even a single election cycle. Texas, by contrast, would turn preclearance on its head: under its version of section 5, by filing a declaratory judgment action seeking preclearance, a

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[1] A list of states that have submitted their redistricting plans for administrative preclearance is available on the website of the U.S. Department of Justice at http://www.justice.gov/crt/about/vot/sec_5/statewides.php.

covered jurisdiction would almost automatically guarantee its ability to use unprecleared plans in the first election cycle after redistricting, since a judicial preclearance action will predictably not be completed in time.

2. Texas was on notice from 2006, when section 5 was renewed, that if it wanted to use its new lines for the 2012 election, it would need to draw the maps quickly in order to obtain preclearance by December 2011 when its election cycle — one of the earliest in the Nation — would get underway. And yet the State dawdled, not adopting a state house redistricting plan until June 17, 2011, and not even adopting a congressional plan during its regular session.[2] The State then waited until two months after the House plan and one month after the Congressional plan had been adopted even to begin the preclearance process, and it chose the judicial route. Its counsel were not neophytes: they surely must have been aware that judicial preclearance would take several months, with little prospect of a resolution in time for the normal election calendar to work.

Moreover, even within the judicial preclearance process, the State dragged its feet. As appellees explained in our opening brief, the State declined the United States' offer of an early trial date, persisted in seeking summary judgment rather than a dispositive trial, and offered a novel and unpersuasive legal standard for determining

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[2] *See* Joint Pretrial Order at 23, 25, *Perez v. Perry*, No. 5:11-cv-00360, Dkt. No. 277 (W.D. Tex. Aug. 31, 2011).

whether the State's new districts gave minority voters an equal opportunity to elect representatives of their choice. *See* Appellees' Opening Br. at 20-21; *see also* J.A. 550. One plausible inference to draw is that Texas was hoping for precisely the situation that now exists: no definitive determination in time for the first post-redistricting election, so that it can offer its novel theory that mere submission of a change should allow the change to go into effect.

The State's complaints about other actors' conduct are meritless. Neither the litigants opposing the State's redistricting plans nor the two three-judge courts created the situation faced by Texas today.

First, with respect to the State's claim that the interventions by affected voters in *Texas v. United States* caused the preclearance case to be "bogged down," the contrary is true. Appellants' Br. at 2. The intervenors adhered rigorously to the schedule urged by the United States. Moreover, the intervenors assisted the preclearance panel in its consideration of the issues before it by providing evidence from the *Perez* record that went to questions of discriminatory purpose and effect.

Second, contrary to the State's argument that the Texas panel should have refrained from holding the trial on the section 2 and constitutional challenges in *Perez*, that court acted entirely appropriately. *See* Appellants' Br. at 15. The Western District was aware that it could not issue a ruling on the plans prior to preclearance but it knew

that if preclearance were obtained, it would then need to rule quickly on whether the plans satisfied section 2 and the Fourteenth Amendment. By receiving the evidence necessary to resolve those claims, the local three-judge court positioned itself to provide an expeditious resolution of the remaining issues.

3. The record in this case and in *Texas v. United States* strongly suggests that Texas chose to seek judicial preclearance rather than administrative preclearance, because of, and not despite, the potential delay. Texas's sole hope of implementing its plans was to avoid a preclearance determination, since such a determination was quite likely to result in the plans being denied preclearance. Had the State submitted its plans for administrative preclearance and received an objection from the Attorney General, it would not even have the figleaf behind which to erect its argument that "interim preclearance" — a misnomer if ever there were one — should be granted.

Nowhere in the State's opening brief does the State grapple with two of the most salient facts about Texas and redistricting: First, Texas has a long and sorry history of diluting Latino voting strength from *White v. Regester*, 412 U.S. 755 (1973), through the present. Since its coverage under section 5, the State of Texas has been blocked eleven times from enacting discriminatory statewide laws. In every round of redistricting since its coverage, Texas has been required to redraw its districts. In 1976, the Attorney General objected to a

discriminatory State House plan; in 1982, the Attorney General objected to discriminatory House, Senate and Congressional redistricting plans; and in 1991, the Attorney General objected to a discriminatory House redistricting plan.[3] And this Court held, in *LULAC v. Perry*, 548 U.S. 399, 440 (2006), that the Texas congressional redistricting plan bore "the mark of intentional discrimination that could give rise to an equal protection violation."

Second, the share of the State's population that is Latino is burgeoning, and yet the State drew congressional and house districts that failed utterly to take this into account — indeed, that reacted to this fact by deliberately minimizing Latino voting strength. As appellees explained in our opening brief, in response to the legitimate political aspirations of "increasingly politically active and cohesive" Latino communities, *LULAC v. Perry*, 548 U.S. at 439, the State purposefully drew district boundaries in a manner that would dilute Latino voting strength. *See* Appellees' Opening Br. at 9-19 .

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[3] See Letter from John R. Dunne, Assistant Attorney General – Civil Rights Division – Dept. of Justice, to Honorable John Hannah, Jr., Secretary of State of Texas (Nov. 12, 1991); Letter from Wa. Bradford Reynolds, Assistant Attorney General – Civil Rights Division – Dept. of Justice, to Honorable David Dean, Secretary of State of Texas (Jan. 29, 1982 and Jan. 25, 1982); Letter from J. Stanley Pottinger, Assistant Attorney General – Civil Rights Division – Dept. of Justice, to Honorable Mark White, Secretary of State of Texas (Jan. 26, 1976 and Jan. 23, 1976), *available at* http://www.lawyerscommittee.org /projects/section_5/.

Concern about the strong population growth among Latinos in Texas and how to respond to it permeated the 2011 legislative session. Legislators were candid about the threat they perceived from increased Latino population, particularly with respect to redistricting. For example, between 2000 and 2010, the Latino population in Harris County increased by 551,789 and the Anglo population decreased by 82,438. *See* Expert Report of Richard Murray at 27, Trial Ex. E-4, *Perez v. Perry*,[4] Trial Tr. 166:15-22. An Anglo Texas Representative from Harris County explained the lines she had drawn — in which proportionally more minority districts are overpopulated above the ideal district size for Harris County when compared to Anglo districts — by telling minority representatives that "you all are protected by the Voting Rights Act and we are not," and explaining that "We don't want to lose these people due to population growth in the county, or we won't have any districts left." Decl. of Garnet F. Coleman at 2-3, *Texas v. United States*, No. 1:11-cv-01303, Dkt. No. 79-26 (D.D.C. Oct. 25, 2011).

Texas Senator Kel Seliger, who chairs the Texas Senate Select Redistricting Committee, testified in *Perez* that although he believed Latinos are willing to vote for Republican candidates, "Republicans haven't done a very good job of reaching out to Latino voters [and] [w]e keep coming up with proposals to declare English the official language of Texas to no good end." Tr. of Dep. of Kel Seliger at 34:20-35:16, Trial Ex. J-59, *Perez v. Perry*,

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[4] All citations to *Perez v. Perry* refer to *Perez v. Perry*, No. 5:11-cv-00360 (W.D. Tex. 2011).

Trial Tr. 1746:18-1747:2 [hereinafter "Seliger Dep."]. Senator Seliger shared his view that creating Latino-opportunity districts seemed to be in some tension with the goal of creating Republican-leaning districts. *Id.* at 35:12-16 ("Q. Do you think it's possible that you could have a majority-Latino district that did prefer a Republican candidate in the general? A. Sure, philosophically I think you could. Has it been done? That, I don't know."). Moreover, despite the fact that Latino Republicans pushed their party to be more inclusive during the 2011 legislative session and that analyses of Latino voting behavior suggest that "[t]here is much more movement across party lines, in terms of how Latinos are distributed," (Trial Test. of Dr. John Alford at 1873:12-19, *Perez v. Perry*, Sept. 14, 2011), when faced with strong Latino population growth and the opportunity to reach out to the burgeoning Latino electorate, the State chose instead to fragment Latino voters so that they would experience no increase in the opportunity to elect Latino-preferred candidates in the new House and Congressional redistricting plans.

Appellees are confident that the Washington D.C. panel will ultimately deny preclearance to the State's plans precisely because Texas intentionally discriminated against Latino voters in drawing its State House and Congressional districts and that, if the State appeals, this Court will affirm the denial of preclearance. We are also confident that, even with respect to areas where the Washington D.C. panel finds neither a discriminatory purpose nor a retrogressive effect, the three-judge court in the

Western District of Texas will find violations of section 2 in the refusal to draw new districts that properly reflect growing Latino populations and that, if the State appeals, this Court will, as it did in *LULAC v. Perry*, 548 U.S. 399 (2006), find violations of section 2. But neither of those decisions, neither of which has yet been rendered, is now before this Court.

II. The Interim Plans Adopted By The Three-Judge Court Comply With All The Relevant Legal Principles

1. Contrary to the State's argument, the three-judge court in this case was forbidden from simply implementing the State's unprecleared plan as an interim measure. *See* Appellants' Br. at 54-55.

As appellees explained in our opening brief, if the Texas panel had done what the State asks — defer wholesale to the State's plan in adopting an interim plan — then the court's plan *itself* would have required preclearance. *See* Appellees' Opening Br. at 44-45 (citing *Lopez v. Monterey Cnty.*, 519 U.S. 9, 22 (1996) and *McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981)); *see also* 28 C.F.R. § 51.18(a).

The State's argument that such deference is authorized by regulation, misconstrues the applicable language. *See* Appellants' Br. at 6, 55. To be sure, 28 C.F.R. § 51.18(d) provides that "[a] Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of

that practice not explicitly authorized by the court." But that provision does *not* say that federal courts are permitted to authorize such use; indeed, this Court has unanimously held in *Clark v. Roemer*, 500 U.S. 646, 652-55 (1991), that when plaintiffs timely seek to enjoin use of an unprecleared election practice — as appellees undeniably did here, filing suit within days of the State's adoption of the challenged plans — it is error for courts to permit their use to go forward. Moreover, as appellees have already explained, any emergency here was entirely of Texas's own making, *see supra* pp. 4-8, and thus provides no basis for circumventing section 5's clear command that no practice can be used "unless and until" it receives preclearance. 42 U.S.C. § 1973c(a).

Finally, the State's attempt to distinguish between "interim" and "permanent" use of a plan is disingenuous at best. *See* Appellants' Br. at 52 ("Allowing an election to go forward on an interim basis while preclearance is pending is not the same as *granting* preclearance."). Many state legislative offices — including, for example, seats in the Texas Senate — involve staggered four-year terms. "Interim" use of a practice that is ultimately denied preclearance can thus result in the use of impermissible electoral practices for nearly half a decade. As this Court long ago recognized, section 5 was intended to "shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966). The State's proposed rule would reverse that burden.

The State attempts to justify this reversal of the statutory language by turning section 5 into an entirely procedural hurdle. Refusal to defer to a covered jurisdiction's unprecleared election laws, the State argues, is justified only when a covered jurisdiction fails even to submit the changes for preclearance — where jurisdictions are, to use the State's term, "recalcitrant"— and not when a jurisdiction is seeking preclearance. Appellants' Br. at 49. The State's argument completely ignores the fact that section 5 is not simply a procedural requirement: it imposes substantive standards. A jurisdiction that adopts a retrogressive plan or that intentionally discriminates against minority voters — an allegation that the preclearance panel found colorable with respect to Texas's plans — is not less "recalcitrant" than a jurisdiction that adopts a fair electoral practice but fails to obtain preclearance. *See* Addendum at 54A. If anything, minority voters are more injured by what Texas has done.

2. As appellees explained in our opening brief, the three-judge court in this case was required to craft an interim plan for conducting the 2012 State House and Congressional elections. *See* Appellees' Opening Br. at 25-26. Moving beyond the State's categorical objection to the three-judge court's having adopted any plan other than the unprecleared 2011 legislative plan, a stark fact emerges: the State's main objections to the judicial maps involve their preservation of existing Latino-opportunity districts and their creation of new districts that fairly recognize intercensal Latino population growth.

Although the State says the three-judge court "proceeded to draw maps governed by its own sense of appropriate public policy," that is simply not the case. Appellants' Br. at 3. To be sure, the three-judge court did not carefully craft its lines to pursue political advantage, as the legislative plan did, but that refusal was entirely appropriate. Nor did the three-judge court surgically move voters in and out of districts to protect incumbents, but that too is beyond a court's role.

To the extent appropriate, the three-judge court *did* defer to state policy. Many of its districts track the lines of districts in the State's plans nearly exactly. The court also deferred a great deal to precleared State policy by relying on the benchmark as the starting point for its plans. The State ignores those decisions entirely.

a. With respect to the State House map, the court's districts are based largely on the benchmark and the State's map. Where the benchmark districts were malapportioned and had to be brought into compliance with one person one vote, the district court looked to the State's House plan and followed it in many instances. *See* J.A. 170-73. For example, more than half of the districts in the court's plan share at least 70 percent of their population with districts in the State's plan. *See* Addendum at 64A-67A.

Many of the remaining districts are based on the benchmark. For example, the three-judge court chose to maintain, in their benchmark locations, two districts that the State's plan relocated to completely

different areas of the state. The district court's interim House plan retained HD 33 in Nueces County, and retained HD 149 in Harris County, where these districts are presently located. The State's plan would have cut HD 33 and HD 149 out of their current locations in the House map and relocated them to Rockwall and Williamson counties respectively. The district court was unanimous in finding that HD 33 and HD 149, both majority-minority districts, should remain in their current locations. Judge Smith wrote that the elimination of HD 33 in Nueces County raised "possible concerns under section 5" and the elimination of HD 149 in Harris County "raises possible section 5 concerns and potentially reeks of racial gerrymandering." J.A. 193.

The State eliminated HD 33 under the guise of adhering to the County Line Rule. However, the precleared benchmark House plan had itself allocated Nueces County among two districts and a partial district that "broke" the county line.

The State's objection to three districts in the court's House plan that it claims improperly unite residents of diverse racial backgrounds similarly ignores the court's deference to the benchmark plan — itself a precleared expression of state policy. *See* Appellants' Br. at 19. Those districts are already majority-minority districts in the benchmark House plan. The district court simply maintained those districts in their current geographic location and maintained their majority-minority demographic composition.

For example, the benchmark HD 149 in Harris County is 77% minority. *See* H100 Map and Voting Rights Data, Trial Ex. J-21, *Perez v. Perez*, Trial Tr. 166:6-14. The State has never claimed that any district in the benchmark plan, which was drawn by the Texas Legislative Redistricting Board in 2001, is a racial gerrymander. Nevertheless, when the district court chose to maintain HD 149 in the same geographic area as the benchmark, with a resulting 75% minority population, the State claims that the district is "race-based" without "legal or factual justification." Appellants' Brief at 19.

The State even accuses the district court of creating racial gerrymanders when the State's versions of the same districts contain majority-minority populations. For example, the State created HD 26 in Fort Bend County with a combined minority population of 56%. *See* H283 Map and Voting Rights Data, Trial Ex. J-29, *Perez v. Perry*, Trial Tr. 166:6-14. The State does not appear to consider its majority-minority district to be a racial gerrymander. By contrast, the State claims that the court impermissibly relied on race when it created its interim HD 26, which is located in the same area of Fort Bend County, splits fewer cities, is more compact, and also contains a majority-minority population.[5]

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[5] *See* Texas Legislative Council, Plan H302_RED100_Population_County, Plan H302_RED135_Cities_CDPs, Plan H302_RED315_Compactness, Nov. 22, 28, 2011, *available at* ftp://ftpgis1.tlc.state.tx.us/planH302/reports/PDF/; *see also* Appellants' Br. at 19.

Similarly, the State's HD 54 in Lampasas and Bell counties is a majority-minority district, but the State does not describe its version of this district as a racial gerrymander. *See* H283 Map and Voting Rights Data, Trial Ex. J-29, *Perez v. Perry*, Trial Tr. 166:6-14. Only when the court located this district in the same geographic area, and made the district more compact by pulling it in one county, does the State now claim that the majority-minority population in the district is unconstitutional. *See* Appellants' Br. at 19.

Finally, the State complains that the district court reduced the extreme population variations between urban districts in Dallas, Harris, and Tarrant counties that the State created for admittedly political reasons. *Id.* at 19-20. However, the district court is not empowered to use the 10% population variation to achieve political ends such as to protect incumbents or to discriminate on the basis of race. In his dissenting opinion, Judge Smith found that "the Legislature created substantial population disparities in Dallas and Harris Counties in a manner that may raise concerns of racial or partisan gerrymandering in violation of *Larios v. Cox*." J.A. 194.

In this case, appellees have raised colorable claims that State's population deviations within the counties were the product of intentional dilution of burgeoning Latino voting strength. Certainly, the district court cannot incorporate population variations that discriminate against certain classes

of voters to pursue political or racially discriminatory ends.

The district court's interim House map is based on neutral principles. For example, the district court's interim House plan splits fewer cities and Census Designated Places than the State's House plan.[6]

Of the more than 1,200 cities in Texas, the State identifies only two that it claims are unfairly split by the district court's House map: The Woodlands[7] and Frisco. It argues that "[n]either of these changes serves any apparent remedial purpose." Appellants' Br. at 18-19. However, the State's House plan split those same two jurisdictions. *See* H283 Map and Voting Rights Data, Trial Ex. J-29, *Perez v. Perry*, Trial Tr. 166:6-14. Despite the fact that the district court's House plan and the State's House plan divide these same two areas, the State claims that the district court's House plan "disregards countless carefully considered policy choices reflected in the legislatively enacted plan." Appellants' Br. at 18. In fact, the State's House plan splits more than 200 Texas cities

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[6] *Compare* Texas Legislative Council, Plan H302_RED135_Cities_CDPs, Nov. 28, 2011, *available at* ftp://ftpgis1.tlc.state.tx.us/planH302/reports/PDF/ *with* H283 Map and Voting Rights Data, Trial Ex. J-29, *Perez v. Perry*, Trial Tr. 166:6-14.

[7] "The Woodlands" is not a city; it is a special use district associated with an upper-income master-planned housing development. *See* "The Woodlands," available at http://www.thewoodlands.com.

and census designated places – more than the number split by the district court in its House plan.[8]

Had the district court deferred any more to the State's unprecleared plan, not only would it have abdicated its responsibility to craft an independent interim plan that could be put into place without itself first obtaining preclearance, but it would have violated the Voting Rights Act. Recall, as appellees explained in our opening brief, that the State's House plan decreases the number of Latino-opportunity districts. *See* Appellees' Opening Br. at 10 (explaining that the Legislature's redistricting plan reduced the number of Latino-opportunity districts by two). It eliminates Latino-opportunity district HD 33 in Nueces County and reconfigures HD 117 in Bexar County so that it no longer offers Latinos the opportunity to elect their preferred candidate. *See id.* at 11 ("The State pulled the boundaries of HD 117 out of precincts in Southwest San Antonio and extended the district into rural areas of the county.") This was done at the request of the incumbent, who is not Latino-preferred. *See* Supp. J.A. Exhibit 1 (testifying that he advocated extending the boundaries of his district, "as far north" as possible in order to gain voters that "were more Anglo and more conservative"). The State's House plan also intentionally discriminates against Latino voters by failing to create a Latino-

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[8] *See* Texas Legislative Council, Plan H302_RED135_Cities_CDPs, Nov. 28, 2011, *available at* ftp://ftpgis1.tlc.state.tx.us/planH302/reports/PDF/; *see also* H283 Map and Voting Rights Data, Trial Ex. J-29, *Perez v. Perry*, Trial Tr. 166:6-14.

opportunity district in the Rio Grande Valley, where the population increased by the size of a House district, and in El Paso, where the district court found the State had created a district in a bizarre shape to protect an incumbent who was not Latino-preferred from his burgeoning Latino electorate. *See id.* at 10-12 (explaining that in the Rio Grande Valley counties of Cameron and Hidalgo, "Latinos constitute more than 88% of the population of both counties" and "[g]iven that over 99% of the population growth over the decade was Latino, such a district would inevitably have been majority-Latino." (citing Expert Report of Dr. Susan Gonzalez Baker at Tables 3 & 4, Trial Ex. E-9, *Perez v. Perry*, Trial Tr. 166:15-22.)).

b. The three-judge court's interim Congressional map also complies with the relevant districting principles.

The State's charge that the interim judicial plan "alters the boundaries of *every single one* of the 36 congressional districts" in the State's unprecleared plan is misleading. Appellants' Br. at 22. Many of the geographic differences between the interim plan and the State's plan are slight and contain few people. *See* J.A. at 147-148 & n.30 (noting that 9 of the interim plan's districts share 93% to 99% of the population in the State's corresponding districts).

Where the interim and State's districts are not identical, there are good reasons supporting the differences. The interim plan is slightly different

from the State's plan because the district court used whole precincts as building blocks in order to minimize the disruption caused by forcing counties to redraw their precincts before an imminent election. *See* J.A. at 138 n.12 and 150 n.33 ("The Court notes that all population shifts were done in terms of VTD's. A "VTD" is a voter tabulation district and is the functional equivalent of a voting precinct. . . . The Court's map splits only 3 VTD's."). By contrast, the State's Congressional plan contains 520 split VTD's. *See* Comparison of All Submitted Interim Congressional Maps, MALC Pl. Ex. 37, *Perez v. Perry*, (W.D. Tex. admitted Oct. 31, 2011).

Further differences between the plans reflect the district court's compliance with the Voting Rights Act. *See* J.A. at 139-44, 146 (describing reliance on the benchmark plan to maintain African American opportunity districts 9, 18 and 30 and Latino-opportunity districts 15, 16, 20, 23, 27, 28 , and 29). The district court added the four new congressional districts in the same geographic areas as the State's plan and then adjusted the remaining districts around the new districts while maintaining their historic locations. Given the district court's reliance on State policy (as expressed either in the benchmark or the State's new plan) and neutral redistricting criteria, the need to avoid violations of the Voting Rights Act, and the strict requirement of equal population in congressional redistricting, it is predictable that the plans would look slightly different. *See* J.A. at 139, 141-42, 147.

Demonstrating the consistency between the State's plans and the district court's plans, the State can identify only 7 districts out of 186 in the Congressional and House plans that it claims are improper.

The few material differences between the interim judicial plan and the State's unprecleared maps are directly attributable to the court's desire to avoid retrogression and to follow neutral districting principles rather than squeezing every last bit of political advantage for one side.

c. On close inspection, the State's objections to the interim judicial plan for congressional districts are similarly meritless.

First, many of the objections are overstated. As explained above, the State's charge that the judicial plan "alters the boundaries of *every single one* of the 36 congressional districts," Appellants' Br. at 22, ignores the fact that most of those alterations still maintain the constituencies of the districts while also complying with neutral districting principles and the Voting Rights Act. The overwhelming majority of the judicially crafted districts overlap the unprecleared districts in every relevant respect.

Second, the judicial plan closely follows the benchmark, which, as appellees explained in our opening brief, provides the appropriate source of state policy to which courts should defer. *See* Appellees' Opening Br. at 28. For example, the State complains that the district court did not adopt the

State's wholesale reconfiguration of CD 20, a majority-Latino district located in the center of San Antonio, Texas. *See* Appellants' Br. at 23. However, the district court's interim CD 20 shares 77% of its population with the benchmark CD 20.[9] The district court was reasonable to take this least-change and neutral approach to CD 20, as opposed to the State's more extreme and unnecessary changes to CD 20. *See* C185 Map and Voting Rights Data, Trial Ex. J-8, *Perez v. Perry*, Trial Tr. 166:6-14.

Similarly, the State claims that the district court's decision to maintain Nueces County in a Gulf Coast congressional district is incorrect because it "frustrates the desire expressed by the public and legislators from both political parties that Nueces County and Cameron County serve as anchor counties in separate congressional districts." Appellants' Br. at 23. On the contrary, besides the incumbent, who feared he would not be reelected if CD 27 remained majority-Latino, few people advocated for Nueces County to be cut away from other majority-Latino counties along the Gulf Coast in South Texas.[10]

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[9] *See* Texas Legislative Council, RED-340 Report Comparing Plan C220 and Plan C100, Nov. 23, 2011, *available at* ftp://ftpgis1.tlc.state.tx.us/planc220/reports/PDF/.

[10] *See* Trial Test. of Ryan Downton at 1022:10–18, *Perez v. Perry*, Sept. 9, 2011; Trial Test. of Gerardo Interiano at 1461:25–1462:7, *Perez v. Perry*, Sept. 12, 2011; Tr. of Dep. of Gerardo Interiano at 113:20-22, Trial Ex. J-61, *Perez v. Perry*, Trial Tr. 1746:18-1747:2; Seliger Dep. at 90:10–21.

Third, many of the features to which the State objects are actually present in its districts as well. For example, the district court's four new congressional districts are located in the same areas as the proposed new districts in the State's unprecleared plans. *See* Addendum at 59A-62A. One new district is in Dallas-Fort Worth, one is on the Gulf Coast, stretching from Bastrop County to Wharton County, one is based in South San Antonio and runs along the I-35 corridor, and one is in East Texas, running from Chambers County to Jasper. *See id.* The State never explains why the court's decisions, which mirror its own, somehow constitute "highly controversial policy judgments[.]" Appellants' Br. at 3.

Similarly, the State complains that the interim judicial plan divides the City of Arlington into three congressional districts without admitting that the State's plan does the same.[11]

Where the interim judicial plan deviates from the benchmark plan or the policies embodied in the State's unprecleared plan, it does so for entirely justifiable reasons. Of particular salience, the three-judge court, in stark contrast to the State, drew a plan that more fairly reflects Latino population and voting strength.

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[11] *See id.*; *compare* Texas Legislative Council, PlanC220_RED135_Cities_CDPs, *available at* ftp://ftpgis1.tlc.state.tx.us/planC220/reports/PDF/ *with* C185 Map and Voting Rights Data, Trial Ex. J-8, *Perez v. Perry*, Trial Tr. 166:6-14.

For example, the State complains that the district court deliberately created CD 33 as a majority-minority district. *See* Appellants' Br. at 24. However, the court heard testimony that the State's congressional districts intentionally split minority voters in this geographic area, known as the Dallas-Ft. Worth Metroplex. *See* M.J.A. at 12-18; 47-51. The State had located one of its four new districts in the Metroplex but the State's CD33 was not compact, perpetuated the fracturing of minority voters and sprawled into 3 counties. The district court's version of this district was more compact and located in one county. *See* Addendum at 59A.

The State's congressional plan does not add any Latino-opportunity districts for the second consecutive redistricting cycle. Texas has not added a Latino-opportunity congressional district since 1991. Since the 1990 census, the Latino population in Texas increased by 5.1 million; the Anglo population increased by 1.1 million. Nevertheless, Texas crafted a congressional plan that carves away majority-Latino counties from majority-Latino districts and uses race to change districts to ensure that Latinos cannot elect their candidate of choice.

Each of the six majority-Latino congressional districts in South Texas was overpopulated according to the 2010 Census. The total excess population from the majority-Latino districts in South Texas, which are located adjacent to each other, constituted three-quarters of an additional congressional district. *See* Addendum at 58A. In addition, the 2010 Census revealed significant

additional population in the I-35 corridor counties to the north of the majority-Latino districts. *See* J.A. at 142.

Despite the need to release population from the benchmark majority-Latino districts in South Texas, and the ease with which the State could have created a seventh majority-Latino district, the Legislature enacted a congressional redistricting plan that fractured majority-Latino communities in South Texas in order to maintain the status quo of six Latino districts in the region.

For example, in the benchmark Congressional plan, CD 23 is a Latino-opportunity district. In 2006, following the remand of *LULAC v. Perry* and the *LULAC* district court's redrawing of CD 23, Latino voters elected their candidate of choice to Congress. In 2008, Latino voters again elected their candidate of choice. *See* Engstrom Corr. Rebuttal Report at 27, Trial Ex. E-7, *Perez v. Perry*, Trial Tr. 166:15-22 [hereinafter "Engstrom Corr. Rebuttal Report"]. In 2010, an Anglo-preferred candidate defeated the Latino-preferred incumbent.

Also since 2006, voting has remained strongly racially polarized in CD 23. *See LULAC v. Perry*, 548 U.S. 399, 427 (2006) (finding that racially polarized voting in CD 23 was "especially severe."). In South and West Texas, where CD 23 is located, from 2006 to 2010 Latino support for their preferred candidates in racially-contested elections ranged from 89% to 81%. By contrast, Anglo support for Latino preferred candidates ranged from 13% to 19%. Engstrom Corr. Rebuttal Report at 7. As a result,

Latino voters in CD 23 continue to struggle to elect their candidate of choice in a context of high racial polarization and relatively lower Latino turnout rates. *Id.* at 25-26. From 2006 to 2010, Latino-preferred candidates won 2 out of three congressional elections inside CD 23 and Latino-preferred candidates won 3 of 7 racially contested exogenous general elections.[12]

The 2010 Census showed that the benchmark CD 23 was overpopulated by 149,163 people. *See* Trial Test. of Dr. Henry Flores at Trial Tr. 450:2-11,, *Perez v. Perry*, Sept. 7, 2011; Chart, Pl. Ex. 236 *Perez v. Perry*, Trial Tr. 2019: 2-6. In its 2011 redistricting plan, the State radically revised CD 23, removing 380,677 people (more than twice the amount needed to achieve equal population) and moving in 231,514 people who had not previously resided in CD 23.[13]

The State made deliberate changes to ensure the re-election of the incumbent in CD 23, despite the fact that it knew the incumbent was not the

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[12] See Charts at 5, Pl. Ex. 200, *Perez v. Perry*, Trial Tr. 2019: 2-6; Election Analysis – 2002 at 1, Pl. Ex. 237, *Perez v. Perry*, Trial Tr. 2019: 2-6; Election Analysis – 2004 at 1,3, Pl. Ex. 238, *Perez v. Perry*, Trial Tr. 2019: 2-6; Election Analysis – 2006 at 1, Pl. Ex. 239, *Perez v. Perry*, Trial Tr. 2019: 2-6; Election Analysis – 2008 at 1, Pl. Ex. 240, *Perez v. Perry*, Trial Tr. 2019: 2-6; Election Analysis – 2010 at 1, Pl. Ex. 241, *Perez v. Perry*, Trial Tr. 2019: 2-6.

[13] *See* Office of the Texas Attorney General, Plan Comparison Reports for C100 and C185, Trial Ex. D-2, *Perez v. Perry*, Trial Tr. 1747:3-12.

candidate of choice of Latinos. *See* Trial Test. of Ryan Downton, *Perez v. Perry*, Tr. 966:3-5; Dep. Tr. of Ryan Downton at 90:9-11, Trial Ex. J-62-I, *Perez v. Perry*, Trial Tr.1746:18-1747:2; Engstrom Corr. Rebuttal Report at 25.[14]

Texas redistricters were aware that the benchmark CD 23 was a Latino-opportunity district and that undermining Latino electoral opportunity in CD 23 would potentially violate section 2 of the Voting Rights Act, 42 U.S.C. 1973. *See* Seliger Dep. at 30:6-15.

Nevertheless, as appellees explained in our opening brief, the State reconfigured CD 23 so that it would elect the Latino-preferred candidate in only one of ten elections. *See* Appellees' Opening Br. at 16 (citing J.A. 666 and Supp. J.A. Exhibit 2).

All experts in this case agreed that Latinos no longer have the ability to elect their candidates of choice in the State's CD 23. *See* Trial Test. of Dr. Henry Flores at Trial Tr. 454:8-455:1, *Perez v. Perry*, Sept. 7, 2011; Trial Test. of Dr. Richard Engstrom at Trial Tr. 515:24-516:4, *Perez v. Perry*, Sept. 7, 2011; Trial Test. of Allan Lichtman at Trial Tr. 1235:15-1236:2, *Perez v. Perry*, Sept. 10, 2011; Trial Test. of Dr. John Alford at Trial Tr. 1872:14-24, 1877:25-1878:7, *Perez v. Perry*, Sept. 14, 2011.

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[14] *See also* Amicus Br. of Congressman Canseco at 4 ("Under the State's Plan, the Texas Legislature made changes to District 23 to protect the incumbent, Congressman Canseco[.])"

The State's "political decision" was to ensure, through sophisticated fragmentation of the rapidly-growing Latino population, that the State's Latino voters would be unable to elect even one more Latino-preferred candidate to Congress. The district court's refusal to adopt the same tactics in its interim Congressional plan, and to maintain CD 23's configuration as a Latino-opportunity district, is a reasonable rejection of purposeful vote dilution. The district court explained its creation of CD 23 as generally "maintaining the status quo" by (1) keeping HCVAP above 50%; (ii) not decreasing SSVR; and (iii) maintaining the current ability of Latinos to elect their candidate of choice.[15] J.A. 143.

The same analysis holds with respect to Congressional District 27. In the benchmark, Nueces County voters constituted the majority of registered voters in CD 27. From 2000 to 2010, the county's Latino population grew by 31,342 and its Anglo population decreased by 6,308.[16] In the

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[15] Contrary to the assertion of Judge Smith in his dissent (J.A. 153), the evidence in the case regarding Latino-opportunity to elect was based on statistical election analysis performed by the State of Texas and appellees that identified Latino candidates of choice in racially contested elections regardless of political party. There is no evidence in the case suggesting that the district court relied on partisan political performance as a proxy for Latino-opportunity to elect. *See* Engstrom Corr. Rebuttal Report at 26-27; Attorney General Reaggregaed Elections Summary, Pl. Ex. 293, *Perez v. Perry*, Trial Tr. 2019:2-6.

[16] *Compare* Race, Hispanic or Latino, Age, and Housing Occupancy; 2010, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml1?pid

State's congressional plan, Nueces County is no longer the anchor of CD 27. The State separated Nueces County, and its Latino voters, from similar South Texas counties to protect the incumbent Blake Farenthold who was not Latino-preferred and who had won the seat in 2010 with 775 votes. *See* Seliger Dep. at 90:10–14 (explaining the goal of "helping Congressman Farenthold get reelected with a base out of Nueces County.").

As described by Senator Kel Seliger, chairman of the Texas Senate Redistricting Committee:

> We cut the district off at Nueces County. And this was -- early on when I met with the Republicans in the Congressional delegation, they said, "Would you mind looking if there is a way to give Mr. Farenthold a good chance to hold that district," in what had been clearly an opportunity district in my view.

Seliger Dep. at 25:24-26:4.

Here, too, the three-judge court's decision to preserve the benchmark district represents nothing more than its compliance with the longstanding principle that judicially crafted plans should avoid

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=DEC10_PL_QTPL&prodType=table *with* GCT-PL. Race and Hispanic or Latino: 2000, *available at* http://factfinder.census.gov/servlet/GCTTable?_bm=n&_lang=en&mt_name=DEC_2000_PL_U_GCTPL_ST2&format=ST-box_head_nbr=GCT-PL&ds_name=DEC_2000_PL_U&geo_id=04000US48.

retrogression. *See* Appellees' Opening Br. at 48-49. The district court explained its configuration of CD 27 as "restor[ing] district 27 to its benchmark configuration as a South Texas district, extending south from Nueces County with Cameron County as its anchor at the border." J.A. at 141.

As appellees explained in our opening brief, there is nothing objectionable — or even demanding of special explanation — in the court's creation of several additional Latino-opportunity districts (one Congressional district and two House districts). *See* Appellees' Opening Br. at 49-50. The fact that a significant majority of the State's intercensal growth is attributable to increases in its Latino population make such districts the natural byproduct of any redistricting plan that doesn't *deliberately* try to avoid creating them. *See id.* at 50-51.

Furthermore, the district court's observations regarding the dramatic Latino growth from 2000 to 2010 is not the same as mapping for proportionality. If the district court had sought to create a proportional number of districts for Latinos, it would have created many more than it did. Instead, the interim plans demonstrate that the district court sought to avoid retrogression and follow neutral districting criteria; it did not seek to create a proportional number of districts.

Thus, contrary to the suggestion of the United States, it is unnecessary to remand the case for further explanation on this point. *See* Amicus Br. of United States at 10, 30-33. In its creation of CD 33,

for example, the district court employed neutral districting principles in a geographic area (Tarrant County) where the Latino population increased by 197,687, African American population increased by 79,809, and Anglo population increased by 41,882 over the past decade. Creating an additional, compact congressional district in this area of the state, with two large and growing minority populations, would predictably yield a district that is 28% Anglo, 40% Latino and 27% African American.[17]

Finally, the State never addresses the serious legal and constitutional problems with its plans identified by Judge Smith in his dissent. Judge Smith elaborated on the reasons why the three-judge court could not adopt the State's plans wholesale, both in light of the fact that the plans had not received preclearance and in light of flaws he found in the State House plan ranging from a district that "potentially reeks of racial gerrymandering," J.A. 193, to other districts that "may raise concerns of racial or partisan gerrymandering in violation of *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004)," J.A. 194, to other districts that created an "extreme gerrymander and palpable population disparities with neighboring districts," J.A. 192, and still another district whose elimination

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[17] In a multi-ethnic state such as Texas, where the population is 45% Anglo, 38% Hispanic and 12% African American, the notion that districts should be majority Anglo by default, and that all majority-minority districts are constitutionally suspect unless justified under the Voting Rights Act, is illogical and borders on the offensive.

by the State raises "a possible section 5 retrogression claim." J.A. 193.

In sum, at this point, six experienced judges from different backgrounds and with different perspectives have all concluded after spending months on the cases before them that the State's plans had serious flaws. Unless and until the State receives preclearance, or appeals from a D.D.C. decision denying it, this Court should not intervene.

CONCLUSION

For the reasons stated here and in appellees' opening brief, the orders of the United States District Court for the Western District of Texas should be affirmed.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**********	)	
STATE OF TEXAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 11-1303
	)	(TBG-RMC-BAH)
	)	
UNITED STATES OF AMERICA, and ERIC H. HOLDER, in his official capacity as Attorney General of the United States	)	
	)	
Defendants, and	)	
	)	
Wendy Davis, et. al., Intervenor-Defendants.	)	
	)	
**********		

MEMORANDUM OPINION

Before: GRIFFITH, Circuit Judge, COLLYER &HOWELL, District Judges.

COLLYER, District Judge:

In the summer of 2011, the Texas legislature redrew the boundaries for voting districts in the State to account for the report of the 2010 Census that its population had grown in the last decade by

more than four million people, about two-thirds of whom are Hispanic. As required by Section 5 of the Voting Rights Act, Texas has asked this Court for a declaratory judgment that its redistricting plans have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The United States contends that the proposed congressional and State House districts adversely affect the voting rights of Hispanics. Various Intervenors assert the same claim as the United States, but some of them target the plans for the State Senate as well.

On November 8, 2011, this Court denied summary judgment to Texas because: 1) Texas used an improper standard and/or methodology to determine which districts afford minority voters the ability to elect their candidates of choice; and 2) material facts remain in dispute regarding whether the plans in fact comply with Section 5 of the Voting Rights Act. Order [Dkt # 106]. This Opinion provides our analysis.

I. FACTS

A. Procedural Background

On July 19, 2011, Texas filed the instant complaint for declaratory judgment that redistricting plans[1] it adopted to govern elections for the U.S. House of Representatives ("Congressional Plan"), the

[1] Redistricting is a process by which national, state, and local voting districts are redrawn, normally after each national census because of population changes over the intervening decade.

State House of Representatives ("State House Plan"), the State Senate ("State Senate Plan") (collectively the "Plans"), and the State Board of Education complied with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The United States and several of the Intervenors[2] (collectively with the United States, the "Defendants") filed answers challenging the Congressional Plan, the State House Plan, and the State Senate Plan. No one challenges the redistricting plans for the State Board of Education.[3]

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[2] This Court has granted seven parties status as Defendant-Intervenors. Each Intervenor contests various aspects of one to three of the plans in their capacity as individual voters, state elected representatives, or civil rights advocacy groups. The Davis Intervenors are Texas State Senators and representatives from districts in the Fort Worth area. The Mexican American Legislative Caucus is a caucus group in the Texas House of Representatives. The Gonzales Intervenors are a group of Hispanic and Black voters residing in Texas. The Texas Legislative Black Caucus is composed of seventeen members of the Texas House of Representatives. The Texas Latino Redistricting Task Force is a group of Hispanic organizations focusing on redistricting and voter registration. The Texas State Conference of NAACP Branches and the League of United Latin American Citizens are civil rights and advocacy groups concerned with minority voting rights in Texas.

[3] The Texas State Board of Education ("BOE") is composed of fifteen single-member districts. Texas claimed that the benchmark plan for the BOE contained three Hispanic "opportunity" districts, with a Hispanic Citizen Voting Age Population ("HCVAP") of greater than fifty percent, and two Black "opportunity" districts, with a Black Voting Age Population ("BVAP") of greater than thirty percent. In the proposed BOE plan, Texas states that there are also three Hispanic "opportunity" districts that have an HCVAP of greater than fifty percent, and two Black "opportunity" districts with BVAPs of greater than thirty percent. This Court provided the parties another opportunity to object to preclearance of the

Texas moved for summary judgment on September 14, 2011. The parties engaged in swift discovery, filed briefs and exhibits, and presented oral argument to this Court on November 2, 2011.

A three-judge court in the Western District of Texas is currently hearing constitutional challenges and challenges under Section 2 of the Voting Rights Act to these same redistricting Plans. Mindful of the fact that our refusal to grant preclearance would require that court to draw interim plans because of election-related deadlines in Texas, this Court issued an order denying summary judgment on all three Plans on November 8, 2011. *See* Dkt. # 106; *see also* Perez v. Texas, No. 5:11-360, Am. Order [Dkt. # 391] (W. D. Tex. Oct. 4, 2011) (consolidated action); Davis v. Perry, No. 5:11-788, Am. Order [Dkt. # 15] (W. D. Tex. Oct. 4, 2011). The Court now issues its Memorandum Opinion explaining its reasoning.

B. Statutory Background

The Voting Rights Act of 1965 ("VRA"), Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973 et seq.), was enacted to counteract attempts by states and local jurisdictions to evade the Reconstruction Amendments' prohibitions on racial discrimination in voting.[4] Litigation and court

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proposed BOE plan during a teleconference held on September 21, 2011. After no party voiced opposition, this Court entered declaratory judgment in favor of Texas on that plan on September 22, 2011. See Minute Entry Order (Sept. 22, 2011). Consequently, the BOE plan is not in contention here.

[4] The VRA was extended in 1975 to cover members of language minority groups, such as Hispanics. Through reference to 42

orders had been slow and often ineffective in curbing the egregious abuses that jurisdictions had used to impede minority voters in the exercise of their constitutionally protected rights. *South Carolina v. Katzenbach*, 383 U.S. 301, 313-14 (1966). The VRA contains a set of "sterner and more elaborate measures" that Congress found necessary to fight the "insidious and pervasive evil which had been perpetrated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *Id.* at 309.

The VRA contains a complex remedial scheme "aimed at areas where voting discrimination has been most flagrant." *Id.* at 315. These targeted, temporary remedial measures apply to a state or local political body that is a "covered" jurisdiction as defined by Section 4(b) of the VRA, *i.e.*, one that has been found, according to a statutory formula, to have engaged in voting discrimination. *See* 42 U.S.C. § 1973b(b); *Riley v. Kennedy*, 553 U.S. 406, 413 (2008). Section 5 is one of those temporary remedial measures. It was enacted as "a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as the old ones had been struck down." *Beer v. United States*, 425 U.S. 130,

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U.S.C. § 1973b(f)(2) in both subsections (a) and (b), Section 5 extends its protection to language minority groups:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

42 U.S.C. § 1976b(f)(2).

140 (1976) (quoting H.R. REP. No. 94-196, at 57-58 (1970)).

Section 5 requires covered jurisdictions to obtain preclearance for any changes to voting qualifications, requirements, standards, practices, or procedures either administratively from the Attorney General or from the District Court for the District of Columbia. Section 5 places the burden of proof on the covered jurisdiction to show that the planned change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or [membership in a language minority group]." 42 U.S.C. § 1973c(a). Subsection 1973c(b) of the statute further provides that:

> Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or [membership in a language minority group], to elect their preferred candidates of choice denies or abridges the right to vote . . . .

Id. § 1973c(b). The goal of subsection 1973c(b) "is to protect the ability of such citizens to elect their preferred candidates of choice." *Id.* § 1973c(d). In addition, the statute further explains that "[t]he term 'purpose'. . . shall include any discriminatory purpose." *Id.* § 1973c(c). No change to a voting practice or procedure, including an electoral redistricting plan, *see Miller v. Johnson*, 515 U.S. 900, 905-06 (1995), may be implemented until

preclearance is granted. *Reno v. Bossier Parish School Bd.* (*Bossier I*), 520 U.S. 471, 477-78 (1997).

Section 5 originally was intended to be in effect for only five years, but Congress has re-authorized it four times, most recently in 2006 for twenty-five years.[5] *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504, 2510 (2009). During the 2006 reauthorization, Congress amended the statute to clarify what it meant by "effect" and "purpose" under Section 5, *Shelby Cnty. v. Holder*, No. 10-cv-651, 2011 WL 4375001, at *10-11 (D.D.C. Sept. 21, 2011), and added language to emphasize that a Section 5 inquiry must focus on whether a proposed change will "diminish[]" the ability of minority voters "to elect their preferred candidates of choice." 42 U.S.C. § 1973c(b), (d); H.R. REP. NO. 109-478, at 46 (2006) ("Thus, in amending Section 5 to add a new subsection (b), the Committee makes clear that in making preclearance determinations under Section 5, the comparative 'ability [of the minority community] to elect preferred candidates of choice' is the relevant factor to be evaluated . . . ." (alterations in original)).[6] Speaking broadly, Congress proscribed "any" change that would have such an "effect" because such a change "denies or abridges the right

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[5] On July 27, 2006, President George W. Bush signed into law the Fannie Lou Hamer, Rosa Parks, & Coretta Scott King Voting Rights Reauthorization & Amendments Act of 2006 ("2006 Amendments"), Pub. L. No. 109-246, 120 Stat. 577 (2006). This legislation was passed by a vote of 390-33 by the U.S. House of Representatives, and 98-0 by the Senate.

[6] The House Committee on the Judiciary reported H.R. 9, the Fannie Lou Hamer, Rosa Parks, & Coretta Scott King Voting Rights Reauthorization & Amendments Act of 2006, out of Committee by a vote of 33-1. There was no dissenting minority opinion to the Committee Report.

to vote." 42 U.S.C. § 1973c(b). Thus, a covered jurisdiction will not meet the requirements of Section 5 when a proposed change to a voting procedure or plan would have a retrogressive effect on the "ability" of minority voters to elect candidates of their choice. *Id.*

The 2006 Amendments also proscribe "any" change that "has the purpose of" diminishing the ability of minority voters to elect candidates of their choice. Congress sought to ensure that "purpose" was no longer limited to a "retrogressive purpose," as the Supreme Court had held in *Reno v. Bossier* (*Bossier II*), 528 U.S. 320 (2000), *see* 42 U.S.C. § 1973c(b)-(c); H.R. REP. NO. 109-478, at 46, but covered more broadly "any discriminatory purpose." 42 U.S.C. § 1973c(c) (emphasis added).

Defendants challenge both the effect of and the purpose behind Texas' redistricting Plans. In particular, this lawsuit focuses on the Plans' effect on Hispanic and Black voters in Texas and whether these Plans were enacted with a discriminatory purpose aimed at such voters. For the purposes of the VRA, Hispanic citizens are treated as members of a language minority group. *See* 42 U.S.C. § 1973l(c)(3) ("'[L]anguage minority group' means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.").

1. "Effects" Analysis

The Section 5 evaluation of whether a new procedure has "the effect of denying or abridging the right to vote" is not a question of constitutional law but of statutory construction, and is dependent on congressional intent. *Beer*, 425 U.S. at 139-40. By

enacting Section 5, Congress aimed to guarantee that minorities' new gains in political participation would not be undone. *Id.* at 140-41. Thus, the Supreme Court has found that the "purpose of [Section] 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at 141 (emphasis added); *see* 42 U.S.C. § 1973c(d) ("The purpose of [§ 1973(b)] is to protect the ability of such [minority] citizens to elect their preferred candidates of choice.").

Determining whether a new voting plan diminishes the ability to elect and thus has a retrogressive effect on minority voting rights necessarily requires a comparison between the voting plan in place and the proposed plan. *Bossier I*, 520 U.S. at 478. A covered jurisdiction's existing plan serves as the "benchmark" against which the "'effect' of voting changes is measured." *Id.* The Supreme Court has instructed that Section 5 is not ameliorative and the focus of its retrogression analysis is on "freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory." *Beer*, 425 U.S. at 140 (quoting H.R. REP. NO. 94-196, at 57-58) (internal quotation marks omitted). If a plan does not increase the degree of discrimination against a minority voting population, it is entitled to preclearance. *City of Lockhart v. United States*, 460 U.S. 125, 134-35 (1987). For example, plans that preserve or actually increase minority voting strength should be precleared unless they have a discriminatory purpose. *See Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) (quoting *Lockhart*, 460 U.S. at 134 n.10; *Bush*

v. Vera, 517 U.S. 952, 983 (1996)); *Beer*, 425 U.S. at 141 (holding that an "ameliorative new legislative apportionment cannot violate [Section] 5 unless . . . [it] so discriminates on the basis of race or color as to violate the Constitution").

Beer described Section 5 as requiring covered jurisdictions to protect minority groups' "effective exercise of the electoral franchise," which meant the "ability of minority groups to participate in the political process and to elect their candidate of choice." 425 U.S. at 141 (emphasis added). Although the Supreme Court used this phrase in subsequent decisions, it was not until *Georgia v. Ashcroft* that the Court provided further explanation of its reasoning. *Georgia v. Ashcroft* placed greater emphasis on minority participation in electoral politics, holding that a "court should not focus solely on the comparative ability of a minority group to elect a candidate of its choice" but should look to the "totality of the circumstances" regarding voter participation, including "the extent of the minority group's opportunity to participate in the political process." 539 U.S. at 479-80 (emphasis added). Using this analysis, the Court stated that Section 5 accommodates choices by covered jurisdictions among systems of representation when redistricting, *i.e.*, a jurisdiction may create "safe" majority-minority districts that may "virtually guarantee the election of a minority group's preferred candidate"; it may create districts where a coalition of voters "will help to achieve the electoral aspirations of the minority group"; or it may add "influence districts," where minorities play a "substantial, if not decisive, role in the electoral process." *Id.* at 480-83. The Supreme Court concluded that the lower court's

retrogression analysis had focused too much on decreases in the Black population in majority-minority districts and had not properly credited increases in coalition and influence districts under Georgia's proposed redistricting plan, which could offset potential losses in majority-minority districts. *Id.* at 486-87.

Congress disagreed with this analysis and amended Section 5 in response to *Georgia v. Ashcroft* during the VRA's 2006 reauthorization. *See* H.R. REP. NO. 109-478, at 45; S. REP. NO. 109-295, at 18 (2006); *see also LaRoque v. Holder*, 650 F.3d 777, 794 (D.C. Cir. 2011); *Shelby Cnty.*, 2011 WL 4375001, at *11. The 2006 Amendments clarified that Congress intended a Section 5 inquiry to focus on whether a proposed voting change will diminish the "ability [of minority citizens] to elect preferred candidates of choice." H.R. REP. NO. 109-478, at 46 (emphasis added). Thus, Congress specified that any change that has the effect of diminishing citizens' ability to elect a candidate of their choice on account of race, color, or membership in a language minority group "denies or abridges the right to vote" within the meaning of Section 5. 42 U.S.C. § 1973c(b); H.R. REP. NO. 109-478, at 46.

By these Amendments, Congress sought to make clear that it was not enough that a redistricting plan gave minority voters "influence"; a plan cannot diminish their ability to elect candidates. The House Report opined that leaving the *Georgia v. Ashcroft* standard in place would encourage states to disperse minority voters into different voting districts under an "influence" label and that gains made by minority voters in districts where they were represented by

the candidate of their choice would be jeopardized. H.R. REP. NO. 109-478, at 45.

2. "Purpose" Analysis

Section 5 also prohibits covered jurisdictions from implementing a plan that is enacted with the "purpose" of "denying or abridging the right to vote on account of race, color, or [membership in a language minority]." 42 U.S.C. § 1973c. In *Bossier II*, the Supreme Court held that a plan animated by a discriminatory purpose could nonetheless merit preclearance if its purpose was something other than to diminish a minority group's ability to elect their preferred candidates. The government conceded that the plan proffered by the covered jurisdiction did not have a retrogressive effect on the voting ability of the minority population. 528 U.S. at 324. The government argued that the Court should nonetheless deny preclearance because facts demonstrated that the plan was enacted with discriminatory intent. *Id.* at 328. In a 5-4 decision, the Supreme Court concluded that "the 'purpose' prong of § 5 covers only retrogressive dilution." *Id.* In other words, Section 5 only prohibited plans that were enacted with the purpose to reduce minorities' ability to elect — whether or not retrogression actually occurred. Section 5 did not, however, "prohibit preclearance of a redistricting plan enacted with a discriminatory but non-retrogressive purpose." *Id.* at 341.

In the 2006 Amendments, Congress clarified that the "purpose" requirement of Section 5 prohibits not only voting plans enacted with a retrogressive purpose, but also plans devised with "any

discriminatory purpose." 42 U.S.C. § 1973c(c). The House Report characterized *Bossier II* as a severe limitation on the reach of the "purpose" prong, through which "Congress [had] sought to prevent covered jurisdictions from enacting and enforcing voting changes made with a clear racial animus, regardless of the measurable impact of such discriminatory changes." H.R. REP. NO. 109-478, at 42. According to the House Report, Congress intended to restore the pre-Bossier II discriminatory purpose standard:

> Voting changes that "purposefully" keep minority groups "in their place" have no role in our electoral process and are precisely the types of changes Section 5 is intended to bar. To allow otherwise would be contrary to the protections afforded by the 14th and 15th [A]mendment[s] and the VRA. Thus, by clarifying that any voting change motivated by any discriminatory purpose is prohibited under Section 5, the Committee seeks to ensure that the "purpose" prong remains a vital element to ensuring that Section 5 remains effective.

Id. at 43. To that end, Congress endorsed the framework in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), to determine "whether voting changes submitted for preclearance were motivated by a discriminatory purpose." *Id.* Prior to *Bossier II*, courts had relied upon the factors set forth in

Arlington Heights to assess whether a covered jurisdiction's proposed change to its voting procedures was based upon a discriminatory purpose. *See Arizona v. Reno*, 887 F. Supp. 318, 322 (D.D.C. 1995); *Busbee v. Smith*, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). Indeed, *Bossier I* instructed lower courts conducting a Section 5 analysis to "look to . . . *Arlington Heights* for guidance," where the Court had "set forth a framework for analyzing 'whether invidious discriminatory purpose was a motivating factor' in a government body's decisionmaking." 520 U.S. at 488 (quoting *Arlington Heights*, 429 U.S. at 266). The legislative history to the 2006 Amendments and reauthorization of the VRA demonstrate congressional agreement with that approach.

Arlington Heights was not a Voting Rights Act case. It involved the refusal of the Village of Arlington Heights, Illinois, to re-zone a tract of land for low-income housing, which was challenged as a violation of the Equal Protection Clause of the Fourteenth Amendment. In reaching its decision in favor of the Village, the Supreme Court identified multiple factors to assess whether the Village's purpose was discriminatory. 429 U.S. at 267-68. The Court cautioned that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Id.* at 266; *see also Hunt v. Cromartie*, 526 U.S. 541, 546 (1999) (describing such an inquiry as "an inherently complex endeavor").

"[A]n important starting point," the Court directed, is to consider whether the challenged action "bears more heavily on one race than another."

Arlington Heights, 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)) (internal quotation marks omitted). In "easy" cases, "a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." *Id.* (citations omitted). That said, absent a pattern of discrimination which is "stark," an action's "impact alone is not determinative, and the Court must look to other evidence." *Id.* (footnote omitted). Courts should consider "[t]he historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes"; "[t]he specific sequence of events leading up [to] the challenged decision [which] also may shed some light on the decisionmaker's purposes"; and "[t]he legislative or administrative history," which can be "highly relevant . . . where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Id.* at 267-68.

C. Parties' Arguments Regarding the Legal Standard to Measure Retrogressive Effect

Texas and the Defendants contest the standard for measuring whether a proposed redistricting plan would have a retrogressive effect on minority voters' ability to elect their candidates of choice. Texas relies on voting population demographics alone. In both its benchmark and proposed plans, Texas counted as ability districts, which it calls "opportunity

districts,"[7] those districts in which Blacks make up forty percent of the voting-age population and Hispanics make up fifty percent of the citizen voting-age population. Texas omitted consideration of all other factors. The United States, joined by all Intervenors, argues for a multi-factored "functional" analysis, which starts with an examination of voting-age population but also analyzes additional factors. *See* Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7470 (Feb. 9, 2011).

Texas contends that the 2006 Amendments to Section 5 provide that covered jurisdictions need only maintain those districts where minority voters can control the election and posits that majority-minority districts are best suited to accomplish this goal. Texas relied on voting-age population statistics to ensure that its proposed redistricting Plans were not retrogressive. Texas explains that each of its Plans maintains at least the same number of districts as in

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[7] Texas' use of "opportunity district" connotes a measure of uncertainty that is not supported by the language of the VRA. "Opportunity" denotes conditions that are "favorable" to such an outcome. See WEBSTER'S INTERNATIONAL NEW DICTIONARY 1583 (3d ed. 2002) (defining "opportunity" as "a combination of circumstances, time, and place suitable or favorable for a particular activity or action" (emphasis added)). The statutory standard is whether minorities have an "ability to elect" a preferred candidate. An "ability" denotes the "the physical, mental, or legal power to perform," *Id.* at 3, a concept that requires a greater degree of certainty that an event can occur. Thus, in line with the language of Section 5, this Court references "ability districts" as districts that afford minority voters the electoral power protected under Section 5. This term is used both for districts that have afforded minority voters the ability to elect their preferred candidate in the past and those that predictively will do so in the future.

the benchmark plans in which a specified minority constitutes a percentage of eligible voters sufficient to determine the outcome of elections. Texas sets this percentage at more than fifty percent of the citizen voting-age population for Hispanics ("HCVAP") and forty percent of the voting-age population for Blacks ("BVAP") in the State. Texas "defines 'ability to elect' districts based upon . . . demographic data indicating [that] a [single] cohesive racial or ethnic group has the ability to elect candidates of their choice — whether or not the candidate receives support from other voters in the district." Pl.'s Reply [Dkt. # 92] at 27. Thus, Texas' arguments that its Plans have no retrogressive effect are solely based upon data measuring minority voting-age population.

Defendants challenge this logic and its results. All Defendants ask this Court to conclude, consistent with the guidance issued by the DOJ in 2011 ("2011 DOJ Guidance"), that there is no single measure that determines minorities' ability to elect:

> In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment." *See* [2011 DOJ Guidance]. Determining whether the ability to elect exists "requires a functional analysis of the electoral behavior within the particular jurisdiction or election district." *Id.* Besides population, this includes an examination of election history and

> voting patterns within the jurisdiction, voter registration and turnout information.[8]

U.S. Mem. [Dkt. # 79] at 6; *see* Intervenors' Joint Mem. [Dkt # 74] at 7.

Although the United States relies on the multi-factored 2011 DOJ Guidance, the test it offered to measure retrogression, while more comprehensive than Texas' approach, still relied upon a limited set of data. Using data compiled by the State, the United States' expert, Dr. Lisa Handley, performed a functional election analysis in which she assessed data on statewide elections and elections within specific voting districts in order to identify which districts afford minority voters the ability to elect. She then recompiled data on certain statewide elections based upon the proposed new boundaries of voting districts and determined how often minority-preferred candidates would succeed in the redrawn districts. The United States used this data to assert that minority groups' ability to elect would be lost in

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[8] The 2011 DOJ Guidance indicates that the DOJ also assesses:

> whether minority concentrations are fragmented among different districts; whether minorities are overconcentrated in one or more districts; whether alternative plans satisfying the jurisdiction's legitimate governmental interests exist, and whether they were considered; whether the proposed plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and, whether the plan is inconsistent with the jurisdiction's stated redistricting standards.

76 Fed. Reg. 7470-01, at 7472.

certain proposed congressional and State House districts.

The Intervenors also take issue with Texas' view that all districts where Hispanic voters constitute a majority of the citizen voting-age population or Black voters constitute forty percent of the voting-age population are ipso facto "ability to elect" districts. They advocate for a multi-factored approach that accounts for:

- the size of a district's minority population considering citizenship rates;
- voting-age population and voter registration;
- the extent of racially polarized voting;
- the presence of electoral coalitions involving minority voters;
- the role of incumbency in past elections;
- factors that affect turnout rates by race; and
- recent electoral trends.

Intevenors' Joint Mem. at 6-7.

All Defendants contend that Section 5 protections are not limited to districts where a single minority group has the ability to elect its candidate of choice, but extend to districts where one group of minority voters joins together with voters of a different racial or language background to elect the minority voters' candidate of choice. The United States points to language in the House Report accompanying the 2006 Amendments explaining that Section 5 protects minorities' ability to elect candidates of choice either "directly or coalesced with other voters." U.S. Mem. at 14 (quoting H.R. REP. NO. 109-478, at 46). Defendants urge this Court to conclude that the proposed Plans are retrogressive because they do not account for the loss of coalition districts, while Texas

contends that such districts are not protected under the VRA.

Defendants also argue that where, as in Texas, a proposed plan contains an increased number of voting districts, the percentage of minority ability districts in the proposed plan should be measured against the percentage of minority ability districts in the benchmark plan. Defendants ask this Court to find that the Congressional Plan is retrogressive because it increases the number of electoral districts (in significant part because of the increase in the Hispanic population in Texas), but allegedly does not increase the number of ability districts for Hispanic voters.

Finally, the Intervenors, most specifically the Texas Legislative Black Caucus ("TLBC"), the League of United Latin American Citizens ("LULAC"), and the Texas State Conference of NAACP Branches, assert that Section 5 not only protects against the diminishment of an existing ability to elect, but also the diminishment of an emerging ability to elect. These Intervenors contend that Section 5's retrogression standard must include an assessment of whether redistricting forestalls emerging minority electoral opportunities in benchmark districts. They argue that, because a retrogression analysis under Section 5 in some measure looks to the future effect of changes in voting practices, it must protect against the reduction of predictable future gains in minority voting strength.

D. Parties' Arguments Regarding the Contested Plans

Applying their own respective retrogression analyses, the parties dispute the alleged retrogressive effect that Texas' proposed restricting Plans will have on minority voters' ability to elect their candidates of choice. The parties' comparison of the benchmark plans, *i.e.*, the most recent electoral plans in effect for the U.S. House of Representatives, Texas State Senate, and Texas House of Representatives,[9] with Texas' proposed redistricting Plans leads them to dispute which districts should be counted as minority ability districts in both the benchmark and proposed Plans.[10]

1. The Congressional Plan

In its analysis of the benchmark congressional districts, Texas identified, out of a total of thirty-two districts, seven Hispanic ability districts, each of which allegedly has an HCVAP of more than fifty percent.[11] Texas concedes that under the proposed

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[9] Texas identified the following benchmark plans. For the U.S. House of Representatives, the State identified plan C100, which was implemented in 2006 by the U.S. District Court for the Eastern District of Texas in *LULAC v. Perry*, 457 F. Supp. 2d. 716 (E.D. Tex. 2006). For the Texas House of Representatives, it identified plan H100, which was implemented in 2001 by the same district court in *Balderas v. Texas*, No. 01-158, Final Judgment [Dkt # 458] (E.D. Tex. Nov. 28, 2001). For the Texas State Senate, it identified plan S100, which was implemented in 2001 after it received preclearance from the DOJ.

[10] For example, Texas identified eight minority ability districts in the benchmark congressional plan while the United States identified ten. Likewise, Texas identified forty-three minority ability districts in the benchmark plan for the Texas House while the United States identified fifty.

[11] Texas identified Congressional Districts 15, 16, 20, 23, 27, 28, and 29 as Hispanic ability districts in the benchmark.

Congressional Plan, Congressional District ("CD") 27 would no longer be an ability district for Hispanics. Texas counters that this loss is more than offset by two new Hispanic ability districts: approximately 71.7 percent of the citizen voting age population of CD 34 will be Hispanic; 51.9 percent of CD 35 will be as well. As a result, Texas asserts that its proposed Congressional Plan will add one Hispanic ability district, increasing the number of Hispanic ability districts from seven to eight. The proposed Congressional Plan will thus, according to Texas, ameliorate rather than retrogress Hispanic voting power in the State.

Texas also asserts that Black voting power in the State will be enhanced under the Congressional Plan. Currently, only CD 18 has a BVAP of more than forty percent. With the new plan, CD 30 will also.[12]

The United States agrees that the proposed Congressional Plan does not retrogress Black voting power, and appears to credit Texas with three (not just two) Black ability congressional districts in the Congressional Plan. According to the United States, CDs 9, 18, and 30 are, and will remain, Black ability districts in both the benchmark and the proposed plan. The United States argues, however, that Hispanic voting power will retrogress under the proposed Congressional Plan because: 1) Texas' Congressional Plan does not create any new Hispanic ability districts, despite a significant increase in the Hispanic population and four new congressional

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[12] Without explaining its relevance, Texas also points out that CD 9, which has a more than thirty percent but less than forty percent BVAP, will maintain that percentage under the proposed plan.

districts in the State; and 2) CD 23, which Texas counts as a Hispanic ability district under the benchmark, would not be an ability district in the proposed plan.

Both the United States and Texas agree that the proposed Congressional Plan would include at least seven Hispanic ability districts (CDs 15, 16, 20, 28, 29, 34, and 35) and that CD 27, which was a Hispanic ability district under the benchmark, would lose this status. The parties dispute the status of CD 23 under the proposed plan. Although both agree that CD 23 is a Hispanic ability district under the benchmark, they disagree as to its status under the proposed plan. Texas asserts that CD 23 will continue to be a Hispanic ability district in the proposed plan because it will have an HCVAP of 58.5 percent. The United States argues that CD 23's new boundaries, which will allegedly include Hispanics with lower voter turnout, will actually decrease Hispanic voter participation and diminish their ability to elect. However, the United States agrees that the alleged addition of CDs 34 and 35 as Hispanic ability districts in the proposed Congressional Plan would provide Texas with seven total Hispanic ability districts under the proposed plan.

The Gonzales Intervenors argue that CD 25 should be counted in the benchmark as a minority ability district and that the proposed Congressional Plan has a retrogressive effect on this district. They argue, with no opposition from Texas, that Hispanic, Black, and fifty percent of White voters in CD 25 have voted cohesively in support of minority preferred candidates. But CD 25 will lose large numbers of minority voters in the proposed plan, and

these voters will be replaced by an influx of White voters whose voting behavior differs substantially from the Whites who voted with minorities in the benchmark.

Finally, the United States and several Intervenors assert that the proposed Congressional Plan is retrogressive because it fails to recognize adequately the significance of the Hispanic contribution to Texas' population growth in the last decade. According to the 2010 Census, the population of the State has grown by over four million people since 2000, of which approximately two-thirds are Hispanics. This population surge has resulted in a gain of four seats in the U.S. House of Representatives, increasing the number of Texas delegates from thirty-two to thirty-six, an increase unprecedented for a state fully covered by Section 5. U.S. Mem. at 22 n.9. Despite the historic increase in the number of congressional seats, these Defendants argue that Texas drafted a redistricting plan that creates no new Hispanic ability districts. They argue that this is sufficient evidence that the proposed Congressional Plan is retrogressive, because maintaining at seven the number of Hispanic ability districts in the face of this surge in Hispanic population would reduce the proportion of Hispanic ability districts in Texas' congressional delegation.[13] Texas responds that a redistricting plan that preserves the pre-existing number of minority ability

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[13] The United States and the Latino Redistricting Task Force Intervenors calculate that Hispanic voters have the ability to elect preferred candidates in 21.9 percent of the benchmark districts but only in 19.4 percent of the districts in the Congressional Plan.

districts will always satisfy Section 5's retrogression standard.

2. The Texas House of Representatives Plan

In the benchmark plan for the Texas House of Representatives, Texas identifies thirty districts out of a total of 150 that have an HCVAP of more than fifty percent, which, by Texas' measure, afford Hispanic citizens the ability to elect their candidates of choice.[14] According to Texas, the proposed State House Plan will also have thirty districts that have an HCVAP of more than fifty percent, allegedly maintaining the same number of Hispanic ability districts as in the benchmark. Texas concedes that State House District ("HD") 33, which is currently a Hispanic ability district under the benchmark plan, will no longer be such a district in the proposed State House Plan. Texas claims, however, that "new" HD 148 will offset that loss. With regard to the Black minority population, Texas identifies eleven districts in the benchmark plan that have a BVAP of more than forty percent, and twelve districts with the same BVAP of more than forty percent in the proposed State House Plan. The proposed plan adds HD 27 as a new Black ability district. Based on these population statistics, Texas contends that its proposed State House Plan will not have a retrogressive effect on the ability of Hispanic or Black voters to elect their candidates of choice to the Texas House of Representatives.

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[14] The thirty Hispanic ability districts that Texas identifies in the House benchmark plan are districts 31, 33-43, 74-80, 104, 116, 117-119, 123-125, 140, 143, and 145.

The United States and several Intervenors, however, disagree. Notably, the United States does not believe the proposed State House Plan would retrogress Black voting power.[15] However, according to the United States and several Intervenors, the State House Plan would retrogress Hispanic voting power. Based on its retrogression analysis, the United States identifies thirty-four Hispanic ability districts under the benchmark plan, of which three or four will allegedly be lost in the proposed State House Plan.[16]

Additionally, Dr. Handley opines that of four "coalition districts" in the benchmark, where minorities have been able to elect their candidates of choice by uniting with other minority groups, two — HD 149 and HD 27 — will be lost. In HD 149, a coalition of Hispanic, Black, and Asian voters has repeatedly elected its candidate of choice since 2004, but that ability would be lost under the proposed State House Plan. Although Dr. Handley also identified HD 27 as a coalition district in the benchmark, she noted that it would change to a

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[15] The United States identifies twelve Black ability districts under the benchmark plan, 22, 95, 100, 109-111, 131, 139, 141, 142, 146, and 147. It identifies HD 27 as a new Black ability district in the proposed State House Plan, which brings its count of such districts to thirteen under the proposed plan.

[16] The United States asserts that Hispanic voters would lose the ability to elect their candidate of choice in HDs 33, 35, and 117 due to the reconfiguration of the Hispanic population in each district and racially polarized voting. Additionally, the government states that Hispanic voters may also lose their ability to elect in HD 41. The government's expert was "unable to make a determination" regarding this district. U.S. Mem., Ex. 4 [Dkt. # 79-6] at 1 n.1 (Handley House Report). Texas argues that HDs 35, 41, and 117 will remain majority-minority, although there will be a decrease in HCVAP in HDs 35 and 41.

Black ability district under the proposed plan. Due to alleged fracturing in these districts, the United States anticipates a loss of four to five minority ability districts, *i.e.*, HDs 33, 35, 41, 117, and 149, in the State House Plan.

As noted, most Intervenors agree with the United States. In addition, Intervenors TLBC, LULAC, and the Texas State Conference of NAACP Branches argue that, under the State House Plan, minority voting power would be diminished in HDs 26, 101, 106, and 144, each of which was on the verge of becoming a minority ability district under the benchmark.

3. The Texas State Senate Plan

Out of a total of thirty-one State Senate districts, Texas identifies seven Hispanic ability districts under the benchmark plan in which there is an HCVAP of greater than fifty percent,[17] and claims the same number based on the same districts in the proposed State Senate Plan. Additionally, Texas identifies two Black ability districts with a BVAP of more than forty percent under the benchmark plan, each of which remains such in the proposed State Senate Plan.[18] The United States has similarly concluded that the proposed State Senate Plan is not retrogressive.

However, the Davis Intervenors allege that the State Senate Plan is retrogressive because it

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[17] The Hispanic ability districts that Texas identifies in the State Senate benchmark plan are districts 6, 19-21, 26, 27, and 29.

[18] The Black ability districts that Texas identifies in the State Senate benchmark plan are districts 13 and 23.

fractures Black and Hispanic communities that have formed a working coalition to elect their candidate of choice in Senate District ("SD") 10.[19] This is not a district deemed by Texas or the United States to be a minority ability district in the benchmark plan. However, the Intervenors claim both that it was an ability district in the benchmark and that, due to alleged fracturing of SD 10's minority communities in the proposed State Senate Plan, minority voters in this district will no longer be able to elect their candidate of choice. Texas "refutes any argument that [SD] 10 was 'dismantled'" and further states that SD 10 "in both the benchmark plan and [the proposed plan] is a crossover district, and not even a particularly strong one. Such districts are not protected under the VRA." Texas Reply to Senate [Dkt. # 90] at 5.

Another group of Intervenors — TLBC, LULAC, and the Texas State Conference of NAACP Branches — argues that the proposed State Senate Plan will retrogress minority voters' ability to elect in SD 15. These Intervenors allege that the combined Black and Hispanic percentage of total population in proposed SD 15 decreases from 72.3 percent to 66.7 percent and that such a decrease will be electorally significant. Texas argues in response that "[SD] 15 was not a protected district under the benchmark

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[19] The Davis Intervenors provide a statement from County Commissioner Roy Brooks that Black and Hispanic leaders "deliberately and aggressively recruited Wendy Davis to run in 2008 . . . . To elect our candidate of choice, Blacks and Hispanics had to come together and vote together, which we did." Davis Statement of Facts [Dkt. # 76-2] at ¶ 4. The Davis Intervenors allege that Senator Davis was elected with ninety-nine percent of the Hispanic and Black vote and that she only received thirty percent of the White vote. *Id.* at ¶ 6.

because it was not a majority-minority district."[20] Texas Reply to Senate at 4. According to Texas, "In both the benchmark and [the proposed plan], [SD] 15 is a coalition district" and "such districts are not protected." *Id.*

II. STANDARD FOR SUMMARY JUDGMENT

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); accord *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011). Moreover, summary judgment is properly granted against a party who "after adequate time for discovery and upon motion . . . fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In ruling on a motion for summary judgment, the court must draw all justifiable inferences in the nonmoving party's favor and accept the nonmoving party's evidence as true. *Anderson*, 477 U.S. at 255; *Talavera*, 638 F.3d at 308. A nonmoving party, however, must establish more than "the mere existence of a scintilla of evidence" in support of its position. *Anderson*, 477 U.S. at 252. In addition, the nonmoving party may not rely solely on allegations or conclusory statements. *Greene v. Dalton*, 164 F.3d

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[20] The HCVAP of benchmark SD 15 is twenty-four percent and the BVAP is 26.2 percent, thus, this district is not a majority-minority district for either group individually.

671, 675 (D.C. Cir. 1999). Rather, the nonmoving party must present specific facts that would enable a reasonable jury to find in its favor. *Id.* If the evidence "is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-50 (citations omitted).

III. ANALYSIS

A. Summary Judgment is Inappropriate Because Texas Used an Incorrect Standard to Measure Retrogression

Texas urges this Court to rely solely on voter demographic data to identify majority-minority districts and to count only such districts as minority ability districts. This Court cannot oblige. We find that a simple voting-age population analysis cannot accurately measure minorities' ability to elect and, therefore, that Texas misjudged which districts offer its minority citizens the ability to elect their preferred candidates in both its benchmark and proposed Plans. Since Texas used the wrong standard, there are material facts in dispute about which districts are minority ability districts in the benchmark and proposed Plans. On this record, we cannot determine whether the Plans will have a retrogressive effect on Texas' minority citizens' ability to elect.

Beginning with *Beer*, the Supreme Court has addressed the relationship between majority-minority districts and a minority group's ability to elect, but has never suggested that the inquiry required by Section 5 can be satisfied by examining only the number of majority-minority districts. In

fact, the Court has acknowledged that the inquiry is a complex undertaking. *See Georgia v. Ashcroft*, 539 U.S. at 480 ("The ability of minority voters to elect a candidate of their choice is important but often complex in practice to determine."); *see also Holder v. Hall*, 512 U.S. 874, 883-84 (1994) (plurality opinion) ("[T]here may be difficulty in determining whether a proposed change would cause retrogression . . . ."). Defendants correctly argue that population demographics provide only a valid starting point, and demonstrating that Hispanics or another minority group constitute a citizen voting-age majority in a district may well not suffice, on its own, to demonstrate that they have the ability to elect. *See, e.g., League of United Latin Am. Citizens v. Perry* (*LULAC*), 548 U.S. 399, 428 (2006) (observing that "it may be possible for a citizen voting-age majority to lack real electoral opportunity"). Texas has been able to provide no authority to support its reliance on a single-factor test, and we decline to depart from the clear guidance of the Supreme Court's Section 5 precedent that assessing retrogression is a multifaceted, fact-specific inquiry.

In rejecting Texas' standard, this Court starts with the 2006 Amendments to Section 5. The fundamental question is whether any change proposed by Texas "will have the effect of diminishing the ability" of minorities "to elect" their preferred candidates. 42 U.S.C. § 1973c(b). Should there be any doubt, Congress emphasized that the "purpose" of § 1973c(b) is "to protect the ability" of minority citizens "to elect their preferred candidates." *Id.* § 1973c(d). Clearly, "ability to elect" is the statutory watchword.

In making its Amendments, Congress sought to restore the "ability to elect" standard promulgated by the Supreme Court in *Beer*. H.R. REP. NO. 109-478, at 45-46 ("[A] change should be denied preclearance under Section 5 if it diminishes the ability of minority groups to elect their candidates of choice. Such was the standard of analysis articulated by the Supreme Court in *Beer v. United States* . . . ."); *see Beer*, 425 U.S. at 141 (stating that the Section 5 standard "can only be fully satisfied by determining . . . whether the ability of minority groups to participate in the political process and to elect their choices to office is . . . affected"). The House of Representatives identified significant benefits to minority communities under the *Beer* standard. H.R. REP. NO. 109-478, at 45-46. In addition, the House Report specifically commented that "[v]oting changes that leave a minority group less able to elect a preferred candidate of choice, either directly or when coalesced with other voters, cannot be precleared under Section 5." *Id.* at 46 (emphasis added).

Thus, "being able" or "having the power" to elect — in the past (the benchmark) and the future (a proposed redistricting plan) — is what matters under Section 5. This Court concludes that a review of redistricting plans under Section 5 must be concerned with the functioning of the electorate, *i.e.*, whether minority voters will be "effective [in their] exercise of the electoral franchise." *Beer*, 425 U.S. at 141.

Texas perceives "ability" and "opportunity" as interchangeable, but they represent different concepts that serve different purposes. In its motion, Texas identifies minority "opportunity districts" as significant under Section 5. An "opportunity" to elect

is meaningful under Section 2 of the VRA, but not necessarily under Section 5.

Section 2 is violated upon a showing that minorities "have less opportunity than other members of the electorate to . . . elect representatives of their choice." 42 U.S.C. § 1973(b). Section 2 "was designed as a means of eradicating voting practices that minimize or cancel out the voting strength and political effectiveness of minority groups"; thus, it "bars all States and their political subdivisions from maintaining" any voting practice that, inter alia, dilutes the votes of minority citizens. *Bossier I*, 520 U.S. at 479 (internal quotation marks and citation omitted). A plaintiff claiming vote dilution under Section 2 must satisfy the three "*Gingles* factors:" 1) the minority group is sufficiently large and geographically compact to constitute a majority in a single member district; 2) the group is politically cohesive; and 3) there is sufficient bloc voting by the White majority to defeat the minority preferred candidate. *Id.* at 479-80 (citing *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)). Under the first *Gingles* factor, a plaintiff must show that a sufficient minority population is present to have the potential or opportunity to elect its preferred representative in a single member district. *Bartlett v. Strickland*, 129 S. Ct. 1231, 1243 (2009) (plurality opinion) (citing *Gingles*, 478 U.S. at 50 n.17). That is, Section 2 concerns itself with the possibility of a minority group's present, but unrealized, opportunity to elect. *See Bossier I*, 520 U.S. at 480 ("Because the very concept of vote dilution implies – and, indeed, necessitates – the existence of an 'undiluted' practice against which the fact of dilution may be measured, a § 2 plaintiff must also postulate a reasonable

alternative voting practice to serve as the benchmark 'undiluted' voting practice."). Without such a showing, there can be neither wrong nor remedy. *Bartlett*, 129 S. Ct. at 1243 (citing *Growe v. Emison*, 507 U.S. 25, 41 (1993)).

Under Section 2, demographic data is necessarily geared towards identifying minority voters' "opportunity" to elect. Thus, because Texas equates "opportunity" and "ability" districts, it relies on data analysis pertinent to Section 2 to sustain its analysis of retrogressive effect under Section 5. However, population demographics alone will not fully reveal whether minority citizens' ability to elect is or will be present in a voting district. Demographics alone cannot identify all districts where the effective exercise of the electoral franchise by minority citizens is present or may be diminished under a proposed plan within the meaning of Section 5.[21] *See, e.g.*, *LULAC*, 548 U.S. at 428.

The question of retrogressive effect under Section 5 looks at gains that have already been realized by minority voters and protects them from future loss. A Section 5 claim requires a determination of how and where minority citizens' ability to elect is currently present in a covered jurisdiction and how it will manifest itself in a proposed plan. This requires identifying districts in which minority citizens enjoy an existing ability to elect and comparing the number of such districts in the benchmark to the number of such districts in a proposed plan to measure the proposed plan's effect on minority

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[21] Section 2 challenges are most often concerned with vote dilution claims. This Court uses case law from Section 2 in this Section 5 analysis only as it speaks to circumstances that adversely impact minority citizens' ability to elect.

citizens' voting ability. *See Bossier I*, 520 U.S. at 478 ("Retrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan."). Determining where and how the ability to elect is present is a careful inquiry. This Court finds that the simple voting-age population statistics used by Texas are insufficient, and we cannot be confident that Texas has properly identified existing ability districts in its benchmark or future ability districts under the proposed Plans. Therefore, this Court can neither count the former nor compare them to the latter. There are no easy shortcuts in this inquiry. In particular, language minority status or race does not constitute a simple proxy for partisan preference in gauging the ability to elect. *See, e.g., Bush v. Vera*, 517 U.S. at 968 ("[T]o the extent that race is used as a proxy for political characteristics, a racial stereotyping requiring strict scrutiny is in operation.").

B. The Correct Legal Standard Governing Retrogression Analysis

1. Ability-to-Elect Factors

If population statistics alone are insufficient to determine the existence and location of ability districts, what factors are relevant to an inquiry into retrogressive effect under Section 5? Below we outline the types of factors that are relevant for this analysis. Our list of factors is not exhaustive. It merely highlights the kinds of factors missing from the standard Texas used to seek preclearance.

At the outset, a court addressing a proposed voting plan under Section 5 must determine whether

there is cohesive voting among minorities and whether minority/White polarization is present in the jurisdiction submitting the plan. *See, e.g., Georgia v. Ashcroft*, 539 U.S. at 485 ("[I]t is of course true that evidence of racial polarization is one of many factors relevant in assessing whether a minority group is able to elect a candidate of choice . . . ."). Polarized voting occurs when minority and White communities cast ballots along racial or language minority lines, voting in blocs. *See* H.R. REP. NO. 109-478, at 20. Polarized voting between minorities and Whites often renders minority voters powerless to elect their candidate of choice because White voters will not cross over to elect a minority-preferred candidate. *Id.* Furthermore, polarized voting often signals that minority communities in fact prefer different candidates than the majority and helps to identify districts in which minority voters are effective in electing their candidates of choice.

Next, this Court agrees with all parties that population statistics are significant and an important starting point for a retrogression analysis. Drawing a district with a "safe" minority population can essentially guarantee electoral success for minority voters, regardless of challenges posed by racially polarized voting. *See Georgia v. Ashcroft*, 539 U.S. at 480-81 (noting that "majority-minority districts may virtually guarantee the election of a minority group's preferred candidates in those districts"). Even when voting is polarized, a minority group that constitutes a supermajority in a district will likely have the ability to elect its chosen candidate. A district with a minority voting majority of sixty-five percent (or more) essentially guarantees

that, despite changes in voter turnout, registration, and other factors that affect participation at the polls, a cohesive minority group will be able to elect its candidate of choice.[22] Where such a circumstance is present, there would be no need to make further inquiries into minority voters' ability to elect. However, when there is no supermajority in a

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[22] The Supreme Court found a figure of sixty-five percent of total population to be reasonable to achieve a majority of eligible minority voters in a district. *United Jewish Orgs. of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 164 (1977). In a similar vein, the three-judge court in *Mississippi v. United States*, 490 F. Supp. 569 (D.D.C. 1979), assessing a Section 5 challenge, found that:

> Low black voter registration and voter turn-out combined with racial bloc voting make it necessary for an electoral district in Mississippi to contain a substantial majority of black eligible voters in order to provide black voters with an opportunity to elect a candidate of their choice. It has been generally conceded that, barring exceptional circumstances such as two white candidates splitting the vote, a district should contain a black population of at least 65 percent or a black VAP [voting age population] of at least 60 percent to provide black voters with an opportunity to elect a candidate of their choice.

490 F. Supp. at 575. Likewise, the Seventh Circuit used a minority population figure of sixty-five percent in a Section 2 case to identify when minorities are an "effective majority," i.e., whether they have a "realistic opportunity to elect officials of their choice" in a district. *Ketchum v. Byrne*, 740 F.2d 1398, 1410-15 (7th Cir. 1984). *Ketchum* reached its figure by reasoning from a simple voting majority and augmenting it by five percent to account for low voter registration among minority voters, five percent for low voter turnout, and five percent for youthful population. *Id.* at 1415. If *Ketchum* had started with voting-age population, it would not have added five percent for the youthful portion of the minority population. *Id.*

district, a Section 5 analysis must go beyond mere population data to include factors such as minority voter registration, minority voter turnout, election history, and minority/majority voting behaviors.[23]

Determining that minorities have an ability to elect based solely on their numbers in the voting population of a district cannot account for the most fundamental concern of Section 5: the effect past discrimination has on current electoral power. 42 U.S.C. § 1973b(b); *see Riley*, 553 U.S. at 412 (noting that a jurisdiction is covered under Section 5 if among other things, "on one of three specified coverage dates . . . it maintained a literacy requirement or other 'test or device' as a prerequisite to voting"). As the Intervenors note, historical discrimination against Hispanics in Texas has, in some areas of the State, continued to depress their educational and economic conditions such that the mere attainment of citizen voting-age status might have no real effect on their ability to elect representatives of choice. *See* Latino Redistricting Task Force's Statement of Material Facts in Dispute

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[23] Texas asks this Court to set the percentage for a "safe" district at forty percent BVAP and fifty percent HCVAP. This Court has already noted that, standing alone, these percentages are insufficient to establish the existence of an ability district. Texas' expert seems to agree. Dr. John Alford reports that Hispanic voters will have an ability to elect in a district in which the number of registered Hispanic voters exceeds fifty percent. U.S. Mem., Ex. 6 [Dkt. # 79-8] at 4 (Report of Dr. John Alford). In contrast, Texas relied on (citizen) voting-age population statistics alone. Texas' reliance on a forty percent BVAP and not a BVAP greater than fifty percent suggests that Texas also recognizes the importance of factors beyond majority status in determining which districts will provide minority voters the ability to elect.

[Dkt. # 78-1] at ¶ 257 ("Lower levels of education, income, and earnings have the lingering effect of lowering Latino [electoral] participation rates, including registering and voting."). The Supreme Court has also noted that "the political, social, and economic legacy of past discrimination for Latinos in Texas may well hinder their ability to participate effectively in the political process." *LULAC*, 548 U.S. at 440 (internal quotation marks and citations omitted). Such a background requires a more complicated retrogression analysis than Texas wants this Court to approve, but it is part and parcel of discerning whether minority voters will be effective in their exercise of the electoral franchise. Because the statutory watchword is "ability to elect," data that pertains to actual minority citizen voting strength must be analyzed for each relevant district.

In particular, minority voter registration and minority voter turnout can be important indicators of whether historical barriers to minorities' ability to elect have been eradicated.[24] For example, the Senate Committee on the Judiciary found during the 2006 reauthorization of the VRA that Latino voters nationwide turned out and voted at rates significantly lower than White voters. In addition, the Committee found that in Texas, while 41.5 percent of Latinos were registered to vote, only approximately 29.3 percent turned out in the 2004 election. *See* S. REP. NO. 109-295, at 11. Such findings underscore why Texas' reliance on a bare

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[24] Texas provided some such data in its motion and reply brief, but made no arguments regarding its significance for a retrogression inquiry. It continued to rely on population statistics to argue that its Plans do not have a retrogressive effect.

majority-minority district cannot be used to determine an ability district under Section 5. Given its history, Texas cannot overlook education and employment levels affecting minority electoral participation and remnants of historic discrimination that may continue to affect voting in some areas of the State. Minority voter registration and turnout, together with other evidence of election results and minority voting behavior, will supplement any court's analysis of population trends when counting ability districts in the benchmark and proposed plans.

Other factors are also relevant in the determination of whether past gains in minority citizens' ability to elect will be diminished by "any" change in voting practices. Although the Supreme Court has never outlined all factors relevant to this inquiry, it has emphasized that retrogression analysis "is often complex in practice to determine." *Georgia v. Ashcroft*, 539 U.S. at 480. We conclude that the type of factors relevant to this complex inquiry may include the number of registered minority voters in redrawn districts; population shifts between or among redrawn districts that diminish or enhance the ability of a significant, organized group of minority voters to elect their candidate of choice; an assessment of voter turnout in a proposed district; to the extent discernible, consideration of future election patterns with respect to a minority preferred candidate; and new ability districts that would offset any lost ability district.[25]

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[25] Nonetheless, it may be that retrogression in a proposed plan is unavoidable. Population losses or shifts can decrease minority voter participation. States and other political jurisdictions legitimately consider geographic (e.g., mountains,

Although Intervenors urge this Court to find retrogression when redistricting dismantles a voting district in which a minority group was on the cusp of achieving majority status, this Court will not consider this as a factor in our retrogression analysis. The argument that the VRA protects predictable future gains in minority electoral power is directly at odds with Section 5's purpose to protect against retrogressive effect. *See Beer*, 425 U.S. at 140 (Section 5 was enacted "to shift the advantage of time and inertia from the perpetrators of the evil to its victim, by freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory." (internal quotation marks and citations omitted)). Redistricting can have no retrogressive effect on an ability to elect that has not yet been realized. *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987), cited by TLBC, LULAC, and the Texas State Conference of NAACP Branches, does not change this assessment. As discussed

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water courses) and political (e.g., county lines, city lines) boundaries in drawing election districts. In some circumstances, a non-retrogressive redistricting plan may not be possible given other legitimate constraints on electoral maps. This Court agrees with the comment in the 2011 DOJ Guidance:

> There may be circumstances in which the jurisdiction asserts that, because of shifts in population or other significant changes since the last redistricting (e.g., residential segregation and demographic distribution of the population within the jurisdiction, the physical geography of the jurisdiction, the jurisdiction's historical redistricting practices, political boundaries, such as cities or counties, and/or state redistricting requirements), retrogression is unavoidable.

76 Fed. Reg. 7470-01, at 7472.

further below, *Pleasant Grove* was a discriminatory purpose case. 479 U.S. at 471-72. The decision did not address whether it would be retrogressive to suppress emerging voting strength in a redistricting effort. In line with *Beer* and the language of Section 5, this Court finds that evidence of preventing an emerging ability to elect from crystallizing will not support the contention that a plan has an impermissible retrogressive effect under Section 5.

Finally, Texas argues that the United States' analysis of retrogression, reflected in the 2011 DOJ Guidance, is elusive and expensive. We disagree. Although our analysis is not identical to the 2011 DOJ Guidance, it shares many factors. The 2011 Guidance is consistent with the guidance DOJ has been issuing to assess retrogressive effect for the past two decades.[26] Covered jurisdictions, including

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[26] The relevant DOJ guidance memoranda are those issued in 2001 and 1987. In those policy statements, the DOJ (in different administrations and under different Attorneys General) listed factors exceedingly similar, if not identical, to the ones that the DOJ currently asserts are relevant to a Section 5 retrogression analysis. Compare Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S. § 1973c, 66 Fed. Reg. 5412-01, at 5413 (Jan. 18, 2001) with 76 Fed. Reg. 7470-01, at 7471. In the 2001 Guidance Memorandum, the DOJ stated that it would begin its retrogression analysis by compiling all relevant census data; such data was "the important starting point" for administrative evaluation of benchmark and proposed plans. See 66 Fed. Reg. 5412-01, at 5413 (indicating that DOJ would review "additional demographic and election data" to assess the "actual effect" of proposed changes on minority populations and explicitly mentioning, as it did in 2011, that it believed that "election history and voting patterns within the jurisdiction, voter registration and turnout information, and other similar information are very important" to a VRA retrogression analysis). A Notice issued by the DOJ in1987 was very similar.

Texas, have been able to preclear voting plans under its various iterations.[27] Thus, despite Texas' arguments to the contrary, this Court is hard-pressed to find that a multi-factored test — dependent on population analyses and other factors — is too new, too expensive, or too complex for covered jurisdictions to follow.

2. Coalition Districts

In counting ability districts, Texas ignored those in which coalitions of minority voters and coalitions of minority and White voters formed to support the minority-preferred candidate. But Section 5 requires such consideration in determining whether minorities have the ability to elect preferred candidates. The statute states no preference for how the minority group is able to elect its preferred candidate, whether by cohesive voting by a single minority group or by coalitions made up of different

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See Revision of Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 52 Fed. Reg. 486-01 (Jan. 6, 1987). DOJ noted in 1987 that many covered jurisdictions, much like Texas before this Court, had urged it to adopt a retrogression standard that could be "applied to submitted changes in a fairly mechanical way," but the DOJ declined to adopt such an approach because it would be unrealistic to shorten "[a] Section 5 determination [that] is . . . based on the appraisal of a complex set of facts that do not readily fit a precise formula for resolving the preclearance issues." *Id.* at 486.

[27] See Pl.'s Mem.[Dkt. # 41] at 3 ("[I]n 2003 the [Texas] Legislature decided to take up redistricting again and enacted a congressional redistricting plan. That plan was precleared by the Department of Justice . . . .").

groups.[28] Indeed, the Supreme Court has recognized the value of voting coalitions formed by minority voters:

> [T]here are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice . . . . [M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground.

Georgia v. Ashcroft, 539 U.S. at 481 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)) (internal quotation marks omitted). It is simply a fact of political life that in certain districts, a single minority group may not have the ability to achieve desired electoral outcomes independently, but could elect its preferred candidate if it formed either a crossover district by "attract[ing] sufficient crossover votes from white voters," *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993), or a coalition district by partnering with another minority group.[29]

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[28] The House Report on the 2006 Amendments clearly recognized that coalition districts can work to form an ability district, see H.R. REP. NO. 109-478, at 46, and, while the Senate emphasized majority-minority districts, it did not distinguish or discard minority coalition districts. See S. REP. NO. 109-295, at 17.

[29] Dicta in *Bartlett v. Strickland*, a Section 2 case, differentiated between minority citizens' "own choice" and the choice made by a coalition. 129 S. Ct. at 1244; *see also Voinovich*, 507 U.S. at 154 (comparing crossover districts to "influence" districts). This Court clarifies that coalition districts for Section 5 purposes are

Texas contends that the 2006 Amendments that overruled *Georgia v. Ashcroft* also rejected the idea that coalition politics should be taken into account under Section 5. This argument has no support in the text of the Amendments themselves and misreads the legislative history. Congress only took issue with *Georgia v. Ashcroft* to the extent that it held that states could trade "influence" districts for prior "ability" districts without issue under Section 5. *See* H.R. REP. NO. 109-478, at 44 ("[T]he Supreme Court would allow the minority community's own choice of preferred candidates to be trumped by political deals struck by State legislators purporting to give 'influence' to the minority community. . . . Permitting these trade-offs is inconsistent with the original and current purpose of Section 5."). Congress never found that coalition districts could not provide minority citizens with the ability to elect.[30]

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those in which the candidate voted into office by the coalition is the minority-preferred candidate, whether that candidate is a member of the minority or not. Identification of the minority preferred candidate is a factual question.

[30] In the Senate Report to the 2006 Amendments, Senator Jon Kyl wrote separately "to explain why [he] believe[s] that Congress cannot require that state or local governments create or retain influence or coalition districts." S. REP. NO. 109-295, at 22 (Additional views of Senator Kyl). Senator Kyl's individual views regarding the scope of protection afforded to minorities under Section 5 do not change this Court's analysis, or call into question the legislative intent regarding the 2006 Amendments. First, the Senate Report carries little weight as a piece of legislative history or evidence of legislative intent. As noted by Senator Patrick Leahy and others, the Senate Report was filed a week after the Act had been passed by both houses of Congress. The Senate Report was not considered by Congress prior to a vote on the legislation, and Congress did not adopt or

Texas also cites *Bartlett v. Strickland* to argue that the Supreme Court has rejected the notion that a Section 5 analysis can take political coalitions into account, but *Bartlett* is not a Section 5 case and does not deal with coalition districts. *See* 129 S. Ct. at 1242-43 (stating that the Court did not address "coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition's choice"). Like Section 2 cases before it, a plurality of the Court in *Bartlett* held that a compact minority group needs to have the potential ("opportunity") to constitute a majority in a district for there to be a Section 2 violation. *Id.* at 1244 ("Only once, in dicta, has this Court framed the first *Gingles* requirement as anything other than a majority-minority rule."). Thus, the *Bartlett* Court held that Section 2 does not require states to create potential crossover districts to ensure equal electoral opportunity for minority voters because nothing in Section 2 grants special protection to minority citizens' "right[] to form political coalitions." *Id.* at 1243. Yet, freedom from an obligation to create a crossover district under Section 2 does not equate to freedom to ignore the reality of an existing crossover

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affirm its findings. Indeed, "post- passage legislative history is a contradiction in terms. Any after-the-fact attempts to re-characterize the legislation's language and effects [cannot] be credited." S. REP. NO. 109-225, at 55 (Additional views of Senators Leahy, Kennedy, Biden, Kohl, Feinstein, Feingold, Schumer, and Durbin). Second, as explained below, the statutory text and the Supreme Court's jurisprudence regarding Section 5 make clear that crossover and minority coalition districts provide minority citizens the ability to elect their candidates of choice.

district in which minority citizens are able to elect their chosen candidates under Section 5.

Since coalition and crossover districts provide minority groups the ability to elect a preferred candidate, they must be recognized as ability districts in a Section 5 analysis of a benchmark plan. Coalition and crossover districts that continue unchanged into a proposed plan must be counted as well. Our recognition that crossover and coalition districts are ability districts in a benchmark plan is rooted in the fact that there must be discrete data, by way of election returns, to confirm the existence of a voting coalition's electoral power. For example, evidence that a coalition had historical success in electing its candidates of choice would demonstrate that the minority voters in that district had, and would continue to have, an ability to elect their preferred candidates. Proving the existence of a coalition district will require more exacting evidence than would be needed to prove the existence of a majority-minority district as demonstrating past election performance is vital to showing the existence of an actual coalition district.

By contrast, a state creating a "new" crossover or coalition district simply anticipates, or hopes, that the minority population in the new district will align politically and coalesce with other groups of voters to elect its candidates of choice. It would be extremely difficult to confirm that minority voters would indeed have the ability to elect in the newly formed district.[31] Since potential new crossover-coalition

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[31] Indeed, a state's attempt to create future crossover districts may lead to the creation of "influence" districts that *Georgia v. Ashcroft* approved and Congress rejected in the 2006 Amendments. In *Georgia v. Ashcroft*, the Court approved

districts are "subject to [this] high degree of speculation and prediction," *Bartlett*, 129 S. Ct. at 1245, they can rarely be deemed ability districts in a proposed plan.

3. Retrogression in Proportional Versus Absolute Terms

The Defendants argue that retrogression should be assessed on a plan-wide basis, contending that a relative overall decrease in minority citizens' share of electoral districts is retrogressive. According to this argument, Texas' failure to draw one or more additional Hispanic ability districts in the Congressional Plan is retrogressive in the face of the

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Georgia's creation of new influence and coalition districts in proposed redistricting plans to offset the loss of majority-minority districts in the benchmark. 539 U.S. at 487. Specifically, the Supreme Court stated that Georgia had probably met its burden of demonstrating non-retrogression because its strategy of increasing Black voting strength by "'unpacking' minority voters in some districts to create more influence and coalitional districts [was] apparent." *Id.* As part of the 2006 reauthorization of the VRA, Congress rejected Georgia's proposition that creation of influence and coalition districts may be used to offset other losses of a minority population's voting power, specifically amending Section 5 to "make[] clear that . . . the comparative 'ability [of the minority community] to elect preferred candidates of choice' is the relevant factor to be evaluated when determining whether a voting change has a retrogressive effect." H.R. REP. NO. 109-478, at 46. The House Report to the 2006 Amendments explained the "concern[] . . . that '[m]inority influence is nothing more than a guise for diluting minority voting strength'" and that "leaving the Georgia standard in place would encourage States to spread minority voters under the guise of 'influence' and would effectively shut minority voters out of the political process." *Id.* at 45.

Hispanic population growth in Texas that is in large measure responsible for the State's four new congressional seats. In support, they cite *Georgia v. Ashcroft*: "[I]n examining whether [a] new plan is retrogressive, the inquiry must encompass the entire statewide plan as a whole." 539 U.S. at 479. But that language does not support the Defendants' argument. It was speaking to a state's ability under Section 5 to offset the loss of an ability district in one area of a state by the gain of a new ability district elsewhere. *Id.*

Texas relies on *Abrams v. Johnson*, 521 U.S. 74 (1997), which rejected the idea that the addition of electoral districts necessarily requires the addition of minority ability districts. In *Abrams*, Georgia gained a single new congressional district because of a population increase. This new district was not a minority ability district. The plaintiffs argued that the new plan was retrogressive because by failing to draw the new district as an ability district, the percentage of majority Black districts in the State decreased from ten percent to nine percent. 521 U.S. at 97. The Supreme Court rejected the argument, stating that if it found retrogression on such facts, "each time a State with a majority-minority district was allowed to add one new district because of population growth, it would have to be majority-minority. This the Voting Rights Act does not require." *Id.* at 97-98.

The United States distinguishes *Abrams*, relying on the substantial growth in Texas' Hispanic population, Texas' four new congressional seats (an unprecedented number for States fully covered by

Section 5),[32] and the new provisions of the 2006 Amendments. It urges this Court to limit *Abrams* to its facts, arguing that although a state need not add a new ability district for each new district, under the facts of this case it was retrogressive for Texas not to add any new ability districts.

This Court concludes that *Abrams* does not control. Although *Abrams* is clear that the VRA does not require there to be a new minority ability district for every new congressional seat, it does not hold that a state's failure to draw new minority districts can never be retrogressive. Nevertheless, this Court concludes that Texas' failure to draw new Hispanic ability districts to match the growth of its Hispanic population was not retrogressive. Section 5 is limited to preventing "[s]tates from undoing or defeating the rights recently won" by minorities, *Beer*, 425 U.S. at 140 (quoting H.R. REP. NO. 91-397, at 8) (internal quotation marks omitted); it does not require states to add additional protections, *Id.* (quoting H.R. REP. NO. 94-196, at 57-58) (internal quotation marks omitted), or to create new minority districts in proportion to increases in the minority group's population. *Id.* at 137 n.8 ("This Court has, of course, rejected the proposition that members of a minority group have a federal right to be represented in legislative bodies in proportion to their number in the general population."). Here, where Texas'

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[32] Notably, after the 1990 Census, Texas gained three additional congressional seats in response to which it created two new majority Black districts and a majority Hispanic district "with a view to complying with the Voting Rights Act." See *Bush v. Vera*, 517 U.S. at 957. All three districts, however, were found to be the product of an unconstitutional racial gerrymander. *Id.* at 979-86.

percentage gain in congressional seats (12.5%) is similar to Georgia's percentage gain in Abrams (10%), we see no need to require of Texas what the Supreme Court did not require of Georgia.

Although Texas' alleged failure to account for the significant increase of the Hispanic population in the State does not establish retrogression, it is relevant to the Court's evaluation of whether the Congressional Plan was enacted with discriminatory purpose. A redistricting plan that does not increase a minority group's voting power, despite a significant growth in that minority group's population, may provide significant circumstantial evidence that the plan was enacted with the purpose of denying or abridging that community's right to vote.[33] Cf. City of *Pleasant Grove*, 479 U.S. at 471 ("Section 5 looks not only to the present effects of changes, but to their future effects as well . . . . Likewise, an impermissible purpose under § 5 may relate to anticipated as well as present circumstances.").[34] The

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[33] Based upon its identification of minority ability districts, the United States contends that nearly half a million Hispanics would lose their ability to elect in the proposed Congressional Plan.

[34] In *City of Pleasant Grove*, an "all-white enclave in an otherwise racially mixed area of Alabama," sought preclearance for the annexation of two parcels of land, one vacant and another containing a few white residents. 479 U.S. at 465. The three-judge district court declined to grant preclearance, concluding that the jurisdiction had failed to demonstrate that the annexations did not have the purpose of abridging the minority population's right to vote. The Supreme Court affirmed the three-judge court, concluding that there was sufficient evidence to support the allegation that the city was annexing non-Black areas but refusing to annex Black areas. Despite the fact that there were "no black voters in Pleasant

Defendants are therefore incorrect as to the form, but not necessarily as to the substance of their argument. A state's failure to account for a minority group's population growth that results in additional electoral seats, while not conclusive of an unlawful retrogressive effect under Section 5, may be nonetheless highly relevant and probative to the purpose inquiry.

C. Discriminatory Purpose

Summary judgment is also not appropriate because Texas has failed to demonstrate that the Plans do not have the purpose of "denying or abridging the right to vote on account of race or color, or [membership in a language minority group]." Texas argues that its legislators had no animus towards any racial or language minority group but acted from purely partisan motives in drawing its

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Grove" and the annexations therefore could not have an effect on Black voting in the city, the Court explained:

> [A]n impermissible purpose under § 5 may relate to anticipated as well as present circumstances . . . . Common sense teaches that appellant cannot indefinitely stave off the influx of black residents and voters . . . . One means of thwarting this process is to provide for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance. This is just as impermissible a purpose as the dilution of present black voting strength. To hold otherwise would make appellant's extraordinary success in resisting integration thus far a shield for further resistance. Nothing could be further from the purposes of the Voting Rights Act.

Id. at 471-72 (citations omitted).

redistricting Plans. Texas further argues that significant federalism concerns would be raised if a federal court were to examine the actions of its State legislature.[35] The United States responds that a discriminatory purpose that violates Section 5 does not always require an intent to target a minority group but can include a plan enacted in a discriminatory manner, even if designed to achieve a permissible aim.[36] The Intervenors present some

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[35] Texas does not challenge the constitutionality of Section 5, see Complaint [Dkt. # 1], but relies on the Constitution as a shield. Texas argues that the 2006 Amendments only forbid states from making those changes that would themselves violate the Fourteenth Amendment's guarantee of equal protection and the Fifteenth Amendment's guarantee that the right to vote shall not be "denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. CONST. amend XIV, § 2; *Id.* amend. XV, § 1. A simple comparison of Section 5 and these Reconstruction-era Amendments shows that they do not track and Texas' contention cannot be accepted wholesale. The Fifteenth Amendment does not protect language-minority voters and the Fourteenth Amendment does not apply to a language minority qua language minority. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 41 (2d Cir. 1983) ("Language, by itself, does not identify members of a suspect class."); but see *Olagues v. Russoniello*, 797 F.2d 1511, 1521 (9th Cir. 1986) (distinguishing *Soberal-Perez v. Heckler* and stating that a non-English speaking classification is facially neutral but is, for all practical purposes, a classification based on race and national origin and therefore suspect), vacated as moot, 484 U.S. 806 (1987). Thus, while both Amendments are relevant to the legitimacy of a redistricting plan as to other minorities, they are not determinative and provide only guidance as to language minorities, such as Hispanics.

[36] The United States cites Judge Kozinski's opinion concurring in part and dissenting in part in *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), for this proposition:

evidence supporting their claims of discriminatory purpose, but also suggest that further discovery is needed. At oral argument, Texas contended that, even if taken as true, the evidence presented by the United States and Intervenors is insufficient to prove discriminatory intent.

We conclude that there are genuine issues of material fact regarding whether the Plans were enacted with discriminatory intent. As discussed earlier, the 2006 Amendments make illegal any changes to voting qualifications, requirements, standards, practices, or procedures that are adopted or pursued in order to deny or abridge the right to vote "on account of" a particular characteristic protected by the statute. 42 U.S.C. § 1973c(a)-(c). As the Supreme Court reminds us in *Arlington Heights*, "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." 429 U.S. at 266; *see also Cromartie*, 526 U.S. at 546 ("The task of

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> Assume you are an anglo [sic] homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

918 F.2d at 778 n.1.

assessing a jurisdiction's motivation, however, is not a simple matter; on the contrary, it is an inherently complex endeavor . . . ."). Such an intensely fact-driven inquiry is typically difficult to resolve at the summary judgment stage.

The United States asserts that there is ample circumstantial evidence of discriminatory purpose with regard to the State House and Congressional Plans that raises a genuine dispute of material facts. Likewise, the Intervenors challenge the Plans overall, their general impact on Hispanic voters,[37] the rushed sequence of events that preceded their adoption, procedural and substantive departures from past practice, and treatment of specific districts and communities within each Plan.

Texas only countered arguments from the United States and those Intervenors that challenge the State Senate Plan. In its brief and at oral argument, Texas offered three responses to Defendants' claims of discriminatory purpose: 1) the State's obligation to its own Constitution, which specifically bans unnecessarily dividing counties to form voting districts, *see* TEX. CONST. art. III, § 26; 2) political logic: Hispanics are Democrats, Democrats are the party out of power in the State, and, therefore, it is politics not illegal animus that accounts for any alleged circumstantial evidence of discriminatory

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[37] For example, there are allegedly no new Hispanic ability districts in the Congressional Plan, despite Hispanics' substantial population growth in Texas. The Gonzales Intervenors allege, however, that although Whites now constitute 45.3 percent of the State's population, Whites are a majority of the voting-age population in twenty-five out of thirty-six congressional districts, an increase from twenty-two in the benchmark.

purpose[38]; and 3) affidavit testimony by Texas legislators and their staff that no discriminatory purpose was espoused by any member of the Texas Legislature, any staff, or anyone else when offering redistricting proposals. Yet Texas has not disputed many of the Intervenors' specific allegations of discriminatory intent. This Court concludes that the United States and Intervenors have provided sufficient evidence to preclude summary judgment and to require further review of the claims of discriminatory purpose directed to all three Plans.

IV. CONCLUSION

Section 5 requires a multi-factored, functional approach to gauge whether a redistricting plan will have the effect of denying or abridging minority citizens' ability to elect representatives of their choice. It does not lend itself to formalistic inquiry and complexity is inherent in the statute. The ability to elect can rarely be measured by a simple statistical yardstick, as is the essence of Texas' approach. Defendants also challenge all three Plans as discriminatory in purpose, but genuine disputes of material fact preclude summary judgment on this record. For these reasons, the motion for summary judgment filed by the State of Texas was denied.

Date: December 22, 2011

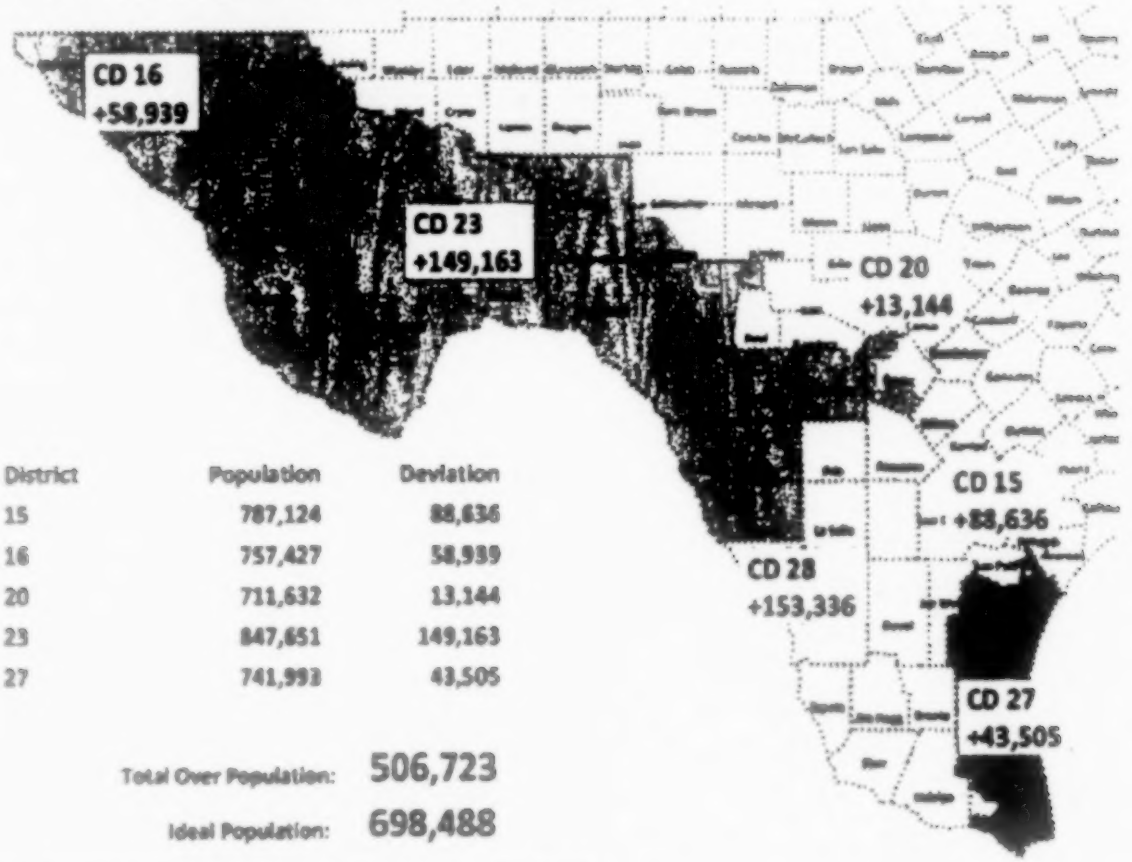
/s/
THOMAS B. GRIFFITH
United States Circuit Judge

[38] But see *Bush v. Vera*, 517 U.S. at 968 ("[T]o the extent that race is used as a proxy for political characteristics, a racial stereotyping requiring strict scrutiny is in operation.").

/s/
ROSEMARY M. COLLYER
United States District Judge

/s/
BERYL A. HOWELL
United States District Judge

C100 South Texas Congressional Districts: Population Deviations



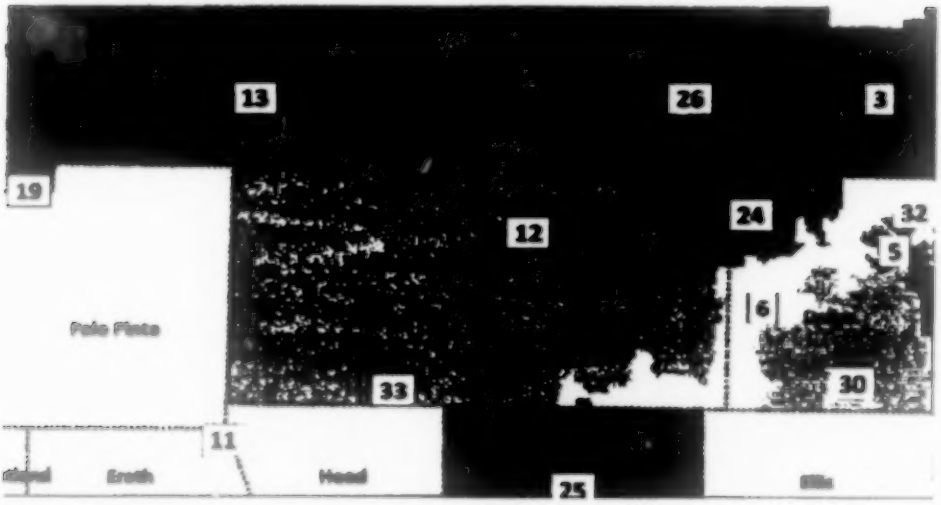
District	Population	Deviation
15	787,124	88,636
16	757,427	58,939
20	711,632	13,144
23	847,651	149,163
27	741,993	43,505

Total Over Population: 506,723

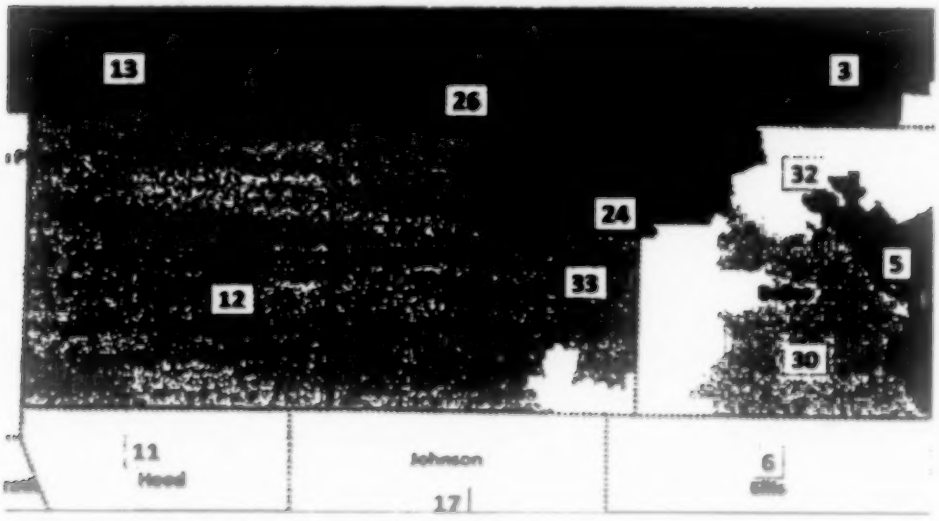
Ideal Population: 698,488

Congressional District 33

Plan C185: 82nd Legislature Enacted Congressional Plan



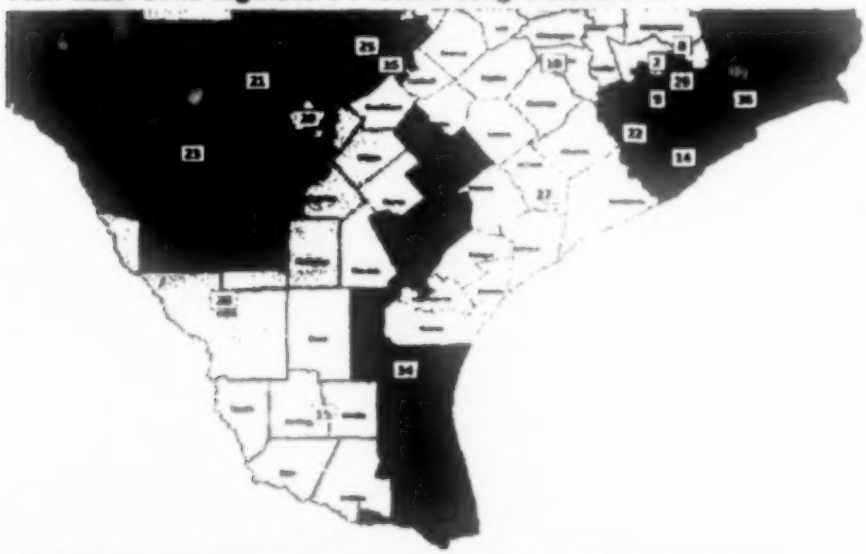
Plan C220: Court-Ordered Interim Congressional Plan



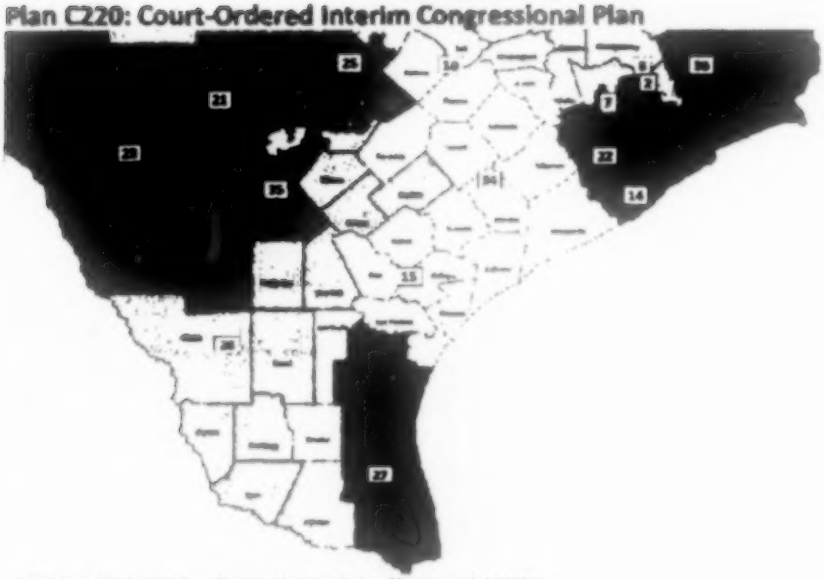
Data Source: C220 and C185 Shapefiles, http://gis.lrl.state.tx.us/ (last accessed 12/11/2011)

Congressional District 34

Plan C185: 82nd Legislature Enacted Congressional Plan



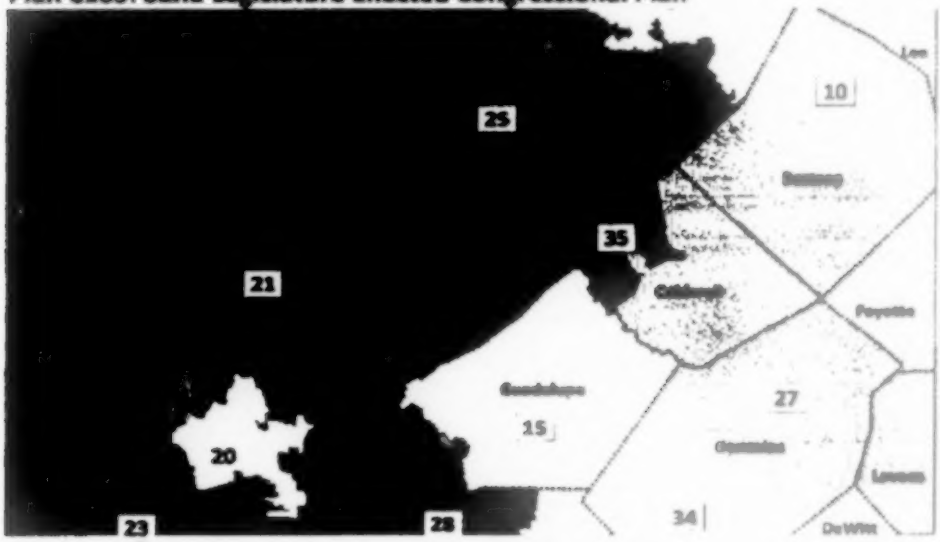
Plan C220: Court-Ordered Interim Congressional Plan



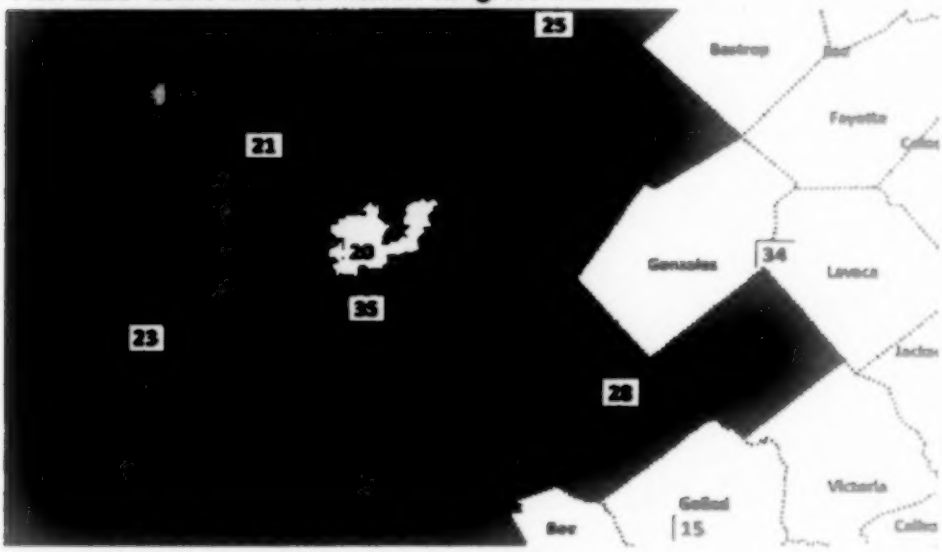
Data Source: C220 and C185 Shapefiles, http://gis1.tlc.state.tx.us/ (last accessed 12/25/2011)

Congressional District 35

Plan C185: 82nd Legislature Enacted Congressional Plan



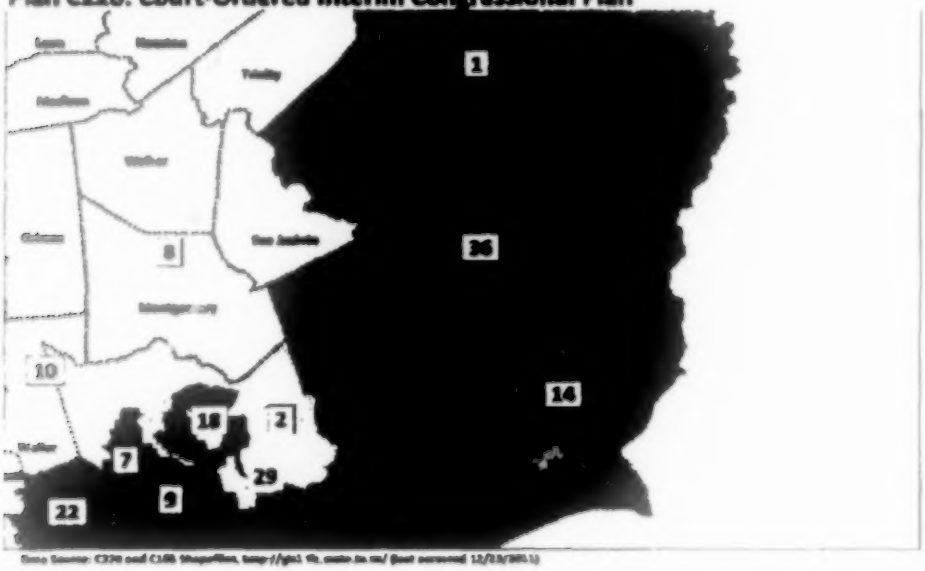
Plan C220: Court-Ordered Interim Congressional Plan



Congressional District 36

Plan C185: 82nd Legislature Enacted Congressional Plan

Plan C220: Court-Ordered Interim Congressional Plan



Data Source: C220 and C185 Shapefiles, http://gis1.tlc.state.tx.us/ (last accessed 12/13/2011)

Interim Congressional Plan Overlap with State's Congressional Plan (Districts with 70% and Higher Overlap)	
District	C185 Core Preservation
1	97.20%
2	73.00%
3	97.80%
4	96.50%
5	94.00%
6	78.20%
7	83.50%
8	92.70%
9	80.90%
11	96.70%
13	98.60%
14	97.20%
16	89.10%
19	99.20%
22	84.90%
24	85.30%
26	80.20%
28	70.60%
29	83.40%
30	80.60%
31	74.10%
32	85.50%
36	76.70%

*Data Source:
Texas Legislative Council, Red-340 report, *available at* ftp://ftpgis1.tlc.state.tx.us/PlanC220/Reports/PDF/ (last accessed 12/23/11)

Interim House Plan Overlap with State's House Plan (Districts with 70% and Higher Overlap)	
District	H283 Core Preservation
1	100.00%
2	100.00%
4	100.00%
5	99.00%
6	98.90%
7	100.00%
8	100.00%
9	100.00%
10	98.10%
11	100.00%
13	75.10%
14	100.00%
15	87.30%
16	74.80%
17	89.60%
18	100.00%
19	100.00%
20	94.90%
21	88.90%
22	86.00%
23	100.00%
24	99.80%
25	99.20%
27	93.90%
29	99.60%
37	88.90%
38	84.70%
39	73.40%

*Data Source: Texas Legislative Council, Red-340 report, *available at* ftp://ftpgis1.tlc.state.tx.us/PlanH302/Reports/PDF/ (last accessed 12/23/11)

Interim House Plan Overlap with State's House Plan (Districts with 70% and Higher Overlap), cont.	
District	H283 Core Preservation
42	96.60%
44	100.00%
45	100.00%
46	88.30%
47	95.60%
48	91.70%
49	91.30%
50	85.80%
51	100.00%
52	96.30%
53	100.00%
54	72.80%
55	71.10%
56	90.90%
12	100.00%
58	100.00%
59	100.00%
60	70.90%
62	100.00%
63	95.40%
64	94.60%
65	100.00%
66	97.20%
67	92.20%
69	78.30%
70	81.80%
71	87.50%
72	94.40%

*Data Source: Texas Legislative Council, Red-340 report, *available at* ftp://ftpgis1.tlc.state.tx.us/Plan H302/Reports/PDF/ (last accessed 12/23/11)

Interim House Plan Overlap with State's House Plan (Districts with 70% and Higher Overlap), cont.	
District	H283 Core Preservation
73	100.00%
74	100.00%
75	99.80%
76	96.50%
79	96.60%
81	100.00%
82	100.00%
83	87.90%
84	99.90%
86	100.00%
87	100.00%
89	90.20%
90	81.60%
91	72.80%
92	92.40%
94	75.30%
95	81.90%
96	78.80%
97	79.40%
98	96.40%
99	76.40%
102	71.50%
103	72.00%
104	71.00%
105	72.10%
108	85.40%
109	76.60%
111	85.40%

*Data Source: Texas Legislative Council, Red-340 report, *available at* ftp://ftpgis1.tlc.state.tx.us/Plan H302/Reports/PDF/ (last accessed 12/23/11)

Interim House Plan Overlap with State's House Plan (Districts with 70% and Higher Overlap), cont.	
District	H283 Core Preservation
115	79.90%
116	98.50%
117	80.00%
118	73.00%
119	79.50%
120	93.60%
121	95.30%
122	97.40%
123	96.70%
124	95.00%
125	99.40%
127	83.70%
128	74.50%
129	84.90%
131	74.00%
132	82.50%
134	74.10%
138	75.60%
139	72.70%
140	74.50%
150	79.70%

*Data Source: Texas Legislative Council, Red-340 report, *available at* ftp://ftpgis1.tlc.state.tx.us/Plan H302/Reports/PDF/ (last accessed 12/23/11)

REPLY BRIEF

IN THE

Supreme Court of the United States

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.,

Appellants,

v.

SHANNON PEREZ, ET AL.

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.,

Appellants,

v.

WENDY DAVIS, ET AL.

Appellees.

RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS, ET AL.,

Appellants,

v.

SHANNON PEREZ, ET AL.

Appellees.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

REPLY BRIEF OF APPELLEES' THE TEXAS STATE CONFERENCE OF NAACP BRANCHES, ET AL., AND CONGRESSPERSONS EDDIE BERNICE JOHNSON, SHEILA JACKSON-LEE, AND ALEXANDER GREEN

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I. SUMMARY OF ARGUMENT

The State of Texas seeks an order implementing unprecleared redistricting plans for the 2012 elections. There is no justification for this end run around Congress' mandated protection of the rights of minority voters on nothing more than the State's assertion that it is entitled to have its plans used in the 2012 elections because it is currently in the process of seeking preclearance of those plans. The alternative they oppose is the use of constitutional, lawful, interim redistricting plans that would be fair to minority voters in Texas. As it has done for many years, even as recently as last decade, Texas continues to misunderstand the Voting Rights Act and what that law, as well as the federal constitution, requires of it in the redistricting process.

The court below followed the guidelines issued by this Court for the construction of interim redistricting plans, and it applied those principles in a neutral way, complying also with Constitutional and Voting Rights Act requirements. Under clear precedent from this Court, the lower court was not required to afford the State's enacted and unprecleared redistricting plans any deference. However, the court below did respect the legislature's prerogative in areas where the constitutional rights of minority voters would not be harmed by the legislature's choices. The end result—court-drawn interim plans that do not disproportionately advantage Anglo voters because of the color of their skin—make even more evident the intentional discrimination that infects almost every aspect of the State's enacted redistricting plans.

The remedy requested by the Appellant in its opening brief—the use of the State's redistricting plans, without regard to their unprecleared status and the vast amount of evidence before the lower court on the constitutional and statutory violations in those plans—is not appropriate given this Court's previous rulings on the legal unenforceability of unprecleared plans. It is also not appropriate because it would, in effect, nullify Section 5 of the Voting Rights Act.

II. ARGUMENT

A. The Lower Court Applied the Correct Standard for Drawing Interim Maps

1. The Lower Court Correctly Interpreted this Court's Precedent Regarding Interim Redistricting Plans

A situation such as the one that Texas currently faces—no usable earlier plans and no preclearance decision on the newly enacted plans—arises only, as the State admits, infrequently. Appellants' Br. 52. Nevertheless, Texas is determined to shoehorn this unique procedural situation into a framework that does not fit. Appellants' Br. 41. The constraints under which the lower court operated—including being precluded from making determinations on Section 5 compliance of the enacted plans and from making determinations on Section 2 and Equal Protection challenges to the enacted plans until after preclearance has been obtained—differentiate this situation from that of a simple case of a preliminary injunction, appropriate only upon a showing of plaintiffs' likelihood of success on the merits. Given the unique procedural positioning of

this case and the clear guidance from this Court on what district courts can and cannot do in this situation, the court below correctly interpreted this Court's precedent and ordered the use of an independent interim plan that preserved the status quo to the extent possible pending the outcomes of the Section 5 litigation in the District of Columbia and the Section 2 and Equal Protection challenges in the lower court.

a. The Lower Court Correctly Read the *Lopez* Line of Cases

In misinterpreting this Court's precedent regarding interim redistricting plans, one of the State's clearest errors is the rampant conflation of different legal issues involved in the preclearance process. The State continues to misunderstand the principles espoused in *Lopez v. Monterey County*, 519 U.S. 9 (1996), and the cases cited in that decision—*Clark v. Roemer*, 500 U.S. 646 (1991), and *McDaniel v. Sanchez*, 452 U.S. 130 (1981). The State characterizes these cases as being entirely about jurisdictions refusing to submit changes for preclearance (Appellants' Br. 48-49), when the true issue is the legal enforceability of plans that have not received preclearance. JA 91-92. The lower court's independent map, derisively referenced in the State's brief, was, in fact, based on the last legally enforceable and precleared maps, which, in this case, are the benchmark plans. JA 139; JA 173. This much is clear from Section 5 cases—voting changes such as redistricting plans are not legally enforceable until and unless they are precleared.

First, the State distinguishes its situation from the ones in *Lopez*, *Clark*, and *McDaniel*, on the basis that

the jurisdictions in those cases were being "recalcitrant." Appellants' Br. 48-50. This is not an accurate reading of these cases. In *Lopez*, the county was involved in years of litigation seeking to implement a non-retrogressive plan to elect judges. 519 U.S. at 15-18. They were, as is Texas, in the process of complying with the Act. In *Clark*, there were questions in the lower court as to whether the Attorney General had precleared earlier changes (additional judgeships) when he precleared subsequent additional increases in the number of judgeships. 500 U.S. at 650-51. In *McDaniel*, the question presented to this Court was "whether the preclearance requirement of § 5 of the Voting Rights Act applies to a reapportionment plan submitted to a Federal District Court by the legislative body of a covered jurisdiction." 452 U.S. at 131.

In each of these cases, there were principled, articulated questions of coverage or whether preclearance had already been obtained. These were jurisdictions trying to ascertain the reach of Section 5, not avoid it. These jurisdictions were not "attempting to shirk [their] obligations under Section 5," as described by the State. Appellants' Br. 50. And here, the State has acknowledged that its enacted redistricting plans must be submitted for preclearance, thus negating Texas' "incentive" explanation for the *Lopez* line of cases.

The main principle, though, that emerges from the *Lopez* line of decisions is that no new voting practice, including a new redistricting plan, is enforceable unless the covered jurisdiction has succeeded in obtaining preclearance. *Clark* v. *Roemer*, 500 U.S. at 652-653; *Conner* v. *Waller*, 421 U.S. 656, 656 (1975) (per curiam). This is true regardless of whether the jurisdiction is in

the process of seeking preclearance. Additionally, given that preclearance requirements may not apply where a district court independently crafts a remedial electoral plan, *McDaniel*, 452 U.S. at 148-150 (quoting S. Rep. No. 94-295, pp. 18-19), this Court has acknowledged that this fact cannot be turned around to unfairly benefit the jurisdiction. This Court has held that where a court adopts a proposal "reflecting the policy choices ... of the people [in a covered jurisdiction] ... the preclearance requirement of the Voting Rights Act is applicable." 452 U.S. at 153.

And, more generally, there is a fundamental flaw in the way that the State interprets Section 5 of the Voting Rights Act. Section 5 is not a punitive law. It is not applied only to jurisdictions that try to avoid its reaches. The purpose behind the law is to protect the gains made by minority voters by shifting the burden of proof from those voters to the jurisdiction proposing a voting change. The prohibitions on retrogression and discriminatory intent are focused on the end result and the process by which the change was enacted, respectively, not the process by which the jurisdiction did or did not seek preclearance. Thus, under Section 5, a plan that makes it more difficult for minority voters to be able to elect their candidates of choice, will not receive preclearance—regardless of whether the jurisdiction voluntarily submitted the plan. Congress designed the preclearance procedure "to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process," *McDaniel*, 452 U.S. at 149 (footnote omitted), not to punish jurisdictions who balk at submitting to the preclearance procedures. The State creates a false dichotomy between a "jurisdiction actively seeking preclearance" and a "jurisdiction that has steadfastly

refused even to seek preclearance." Appellants' Br. 25. This is a distinction without significance for the fundamental rule that an unprecleared change cannot be implemented.

There is absolutely no support for the state's contention that the results in *Lopez*, *Clark* and *McDaniel* are part of an attempt to "incentivize[] a covered jurisdiction to seek preclearance." Appellants' Br. 30, 49. Remedies such as the one employed by the *Lopez* Court are not "wholly out of place," *id.* at 30, because the purpose of Section 5 is to prevent retrogressive or discriminatory changes to voting practices from being implemented, not to punish jurisdictions who do not seek preclearance. As support for its incentives theory, the State cites this sentence from *Lopez*: "The goal of a three-judge district court facing a § 5 challenge must be to ensure that the covered jurisdiction submits its election plan to the appropriate federal authorities for preclearance as expeditiously as possible." Appellants' Br. 50; *Lopez*, 519 U.S. at 24. With that sentence, though, this Court was merely reaffirming what it held in *Perkins* v. *Matthews*, 400 U.S. 379 (1971)—that a district court other than the District Court for the District Columbia was limited to questions of coverage and did not have jurisdiction to decide the merits of Section 5 cases. *Id.* at 385 ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General--the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color'"). Thus, the purpose of Section 5, and the sometimes resulting need for the crafting of interim redistricting plans, is not to incentivize the timely submission of voting

changes for preclearance. The purpose is to make sure unprecleared plans do not go into effect until the Attorney General or the D.C. District Court has been assured that those plans do not have a retrogressive effect and were not drawn with discriminatory purpose.

The State also continues to misunderstand the obligations of a court in crafting any plan, be it remedial or interim in nature. The State commented on the House interim order: "[b]ut, somewhat paradoxically, the majority redrew the maps to avoid any violations should the allegations ultimately prove meritorious." Appellants' Br. 18. This is in fact exactly what the State says the lower court should have done—identified violations. The court below had to comply with the Voting Rights Act and the Equal Protection Clause of the 14th Amendment, regardless of the merits of plaintiffs' claims. This Court has quite clearly admonished that in the crafting of court-drawn plans, district courts should draw those plans "in a manner free from any taint of arbitrariness and discrimination." *Connor v. Finch*, 431 U.S. 407, 415 (1977). The court below must comply with these statutory and constitutional provisions even if no lawsuits alleging violations have been filed.

Finally, the State never addresses this Court's clear precedent that the district court is precluded from ruling on the merits of the Section 2 and Equal Protection claims. In *Conner v. Waller*, this Court, in reference to unprecleared laws, stated: "Those Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5. The District Court accordingly also erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination." 421 U.S. at

656 (*internal citations omitted*). Thus, the court below was merely following *Conner* and the guidance offered by this Court in that decision on deciding challenges to a law prior to preclearance.

b. Preclearance is Unlikely to Be Granted and, As Such, the Lower Court Was Correct in Limiting Deference to the State's Enacted Plan

The fact that the Texas' Congressional and State House plans are unlikely to receive preclearance is relevant to the issues before this Court. With the recent release of its memorandum opinion explaining the denial of summary judgment, the D.C. District Court outlined some of the substantial problems with how the State of Texas had approached compliance with Section 5. *Texas v. United States*, No. 11-cv-1303 (D.D.C.) ("*Texas*"), 2011 WL 6440006, at *24, 28, 34 (Dec. 22, 2011). Texas itself acknowledged that voting changes may not be enforced without preclearance, and that this "reverses the normal rule that a duly-enacted law takes immediate effect." Appellants' Br. 5. Given the myriad of Section 5 legal issues that Texas got wrong, deference to an unprecleared plan constructed on such misunderstandings is even more out of line with the directives of the Voting Rights Act. The opinion of the D.C. court strongly undermines the State's claims that the majority, if not all, of the districts in their enacted plans comply with Section 5 and are owed any deference.

On November 8, 2011, the D.C. District Court denied Texas' motion for summary judgment in the preclearance action. JA 549. On December 22, 2011, the D.C. District

Court released its unanimous memorandum opinion in support of that denial. *Texas*, 2011 WL 6440006. That opinion provides ample justification for concluding that it is highly unlikely that the State's plans will either receive preclearance or only be found in violation of Section 5 in discrete areas of the state. The memorandum identified a number of ways in which the State approached Section 5 compliance in the wrong manner, and the opinion also identified strong evidence of discriminatory intent behind the plans as a whole.

The first problem identified with Texas' understanding of its Section 5 obligations relates to measuring retrogressive effect. Texas relied solely on voting age population demographics to determine whether districts had an ability to elect in the benchmark and the enacted plan, and during the summary judgment proceedings, the State urged the D.C. District Court to adopt this as the standard for measuring retrogressive effect. *Texas*, 2011 WL 6440006, at *12. The Department of Justice, along with Intervenors, instead argued for a multi-factor "functional" analysis that begins with an examination of voting-age population data but also examines a number of other factors. *Id.* at *13. The D.C. District Court agreed with the Defendants, finding that, "Texas misjudged which districts offer its minority citizens the ability to elect their preferred candidates in both its benchmark and proposed Plans." *Id.* at *24. This finding calls into question districts across the entire state—if Texas was improperly determining which districts provided an ability to elect under both the benchmarks and the proposed plans, they likely drew plans that ultimately will be held to be retrogressive.

Second, Texas flatly denied that coalition districts could be protected under Section 5 of the Voting Rights Act. *Texas*, 2011 WL 6440006, at *15. They acknowledged dismantling such districts because they did not believe them to be protected by Section 5. On the other hand, Defendants urged the D.C. court to object to the plans because they did not account for the loss of coalition districts. *Id.* To answer that question, the D.C. District Court looked to language in the House Report that accompanied the 2006 Amendments. *Id.* That language stated: "[v]oting changes that leave a minority group less able to elect a preferred candidate of choice, either directly or when coalesced with other voters, cannot be precleared under Section 5." H.R. Rep. No. 109-478, at 46. The D.C. District Court held that "Congress never found that coalition districts could not provide minority citizens with the ability to elect." *Texas*, 2011 WL 6440006, at *35. That court also noted that "coalition districts for Section 5 purposes are those in which the candidate voted into office by the coalition is the minority-preferred candidate, whether that candidate is a member of the minority or not." *Id.* at *35 n. 30

Moreover, the D.C. District Court also found that "freedom from an obligation to create a crossover district under Section 2 does not equate to freedom to ignore the reality of an existing crossover district in which minority citizens are able to elect their chosen candidates under Section 5." *Texas*, 2011 WL 6440006, at *36. Thus, the D.C. Court concluded that because coalition and crossover districts provide minority groups the ability to elect a preferred candidate, they must be recognized as ability districts in a retrogression analysis. *Id.*

Finally, the D.C. court noted that while a failure to increase the number of minority districts when minority population was responsible for the allocation of additional districts was not, per se, retrogressive, it was probative evidence of discriminatory intent. *Texas*, 2011 WL 6440006, at *40. Given all these problems identified by the D.C. District Court, it is extremely reasonable to conclude that preclearance will not be granted and that a high level of deference to the State's enacted plans would result in substantial injury to minority voters. Such deference would not be in accord with this Court's consistent upholding of Section 5 and the protections it provides.

Even though the court in San Antonio did not have the full opinion from the D.C. District Court outlining the retrogression standard and other elements of the Section 5 analysis at the time it drafted the interim plans, the D.C. court's opinion backs up the cautious approach to avoiding retrogression taken by the San Antonio court. The court below avoided dismantling coalition and crossover districts because that could cause retrogression—the D.C. Court confirmed that the loss of those types of districts could be retrogressive. Additionally, the D.C. court recognized that the failure to add minority districts when minority population growth was responsible for the gaining of additional seats could be evidence probative of discriminatory intent. This aspect of that opinion supports the reasonableness to the lower court's decision to add a new minority Congressional seat and not dismantle naturally-arising minority State House districts.

c. The Lower Court Could Not Engage in Intentional Discrimination in the Construction of Interim Plans

Finally, the court below purposefully refrained from the intentionally discriminatory gerrymanders that it identified on initial examination, without making final determinations on the merits, in multiple places throughout the State's redistricting plans. JA 174; JA 175; JA 178. All the Plaintiffs challenging the State's enacted plans have alleged that the plans were drafted with the intent of diluting and minimizing the voting strength of minority voters. JA 95. Such evidence was also presented to the lower court in the two-week trial on those issues. JA 749; JA 649-50; JA 767; JA 777-79; JA 783-86. The Department of Justice, in the Section 5 declaratory judgment action, has taken the position that discriminatory intent was not limited to any particular district or districts, and Intervenors in that action challenge the plans in their entirety because of that discriminatory intent. JA 94-95. Even the D.C. District Court acknowledged that evidence that no new minority districts were created in spite of the fact that minority population growth was the reason for the apportionment to Texas of additional Congressional seats could be "probative" evidence of intentional discrimination, noting that a "redistricting plan that does not increase a minority group's voting power, despite a significant growth in that minority group's population, may provide circumstantial evidence that the plan was enacted with the purpose of denying or abridging that community's right to vote." *Texas*, 2011 WL 6440006, at *40. Moreover, the court in D.C. noted that Texas did not even dispute much of the Defendants' evidence of intentional discrimination. *Id.* at

22. Given all of this evidence, and the opinion of the D.C. District Court, the lower court rightfully concluded that it could not do as the state did, and act intentionally to limit minority voting strength. As the D.C. District Court noted, the amended purpose prong of Section 5 cannot tolerate such actions. During the reauthorization process, Congress noted:

> Voting changes that "purposefully" keep minority groups "in their place" have no role in our electoral process and are precisely the types of changes Section 5 is intended to bar. To allow otherwise would be contrary to the protections afforded by the 14th and 15th [A] mendment[s] and the VRA.

H.R. REP. No. 109-478 at 43. An order implementing the state's plan, with the substantial taint of intentional discrimination, would be a mark against the fairness of the federal judiciary system. Not only must courts be above reproach, avoiding discrimination and arbitrariness, but they must also avoid rubberstamping and legitimizing unconstitutional and unlawful acts by state legislatures.

d. In the Urban County Districts, Subject to Significant Legal Challenge in the Section 5, and in the Section 2 and Equal Protection Cases, the Lower Court Had to Achieve *De Minimis* Population Variances in the House Plan

In order to comply with Texas' county line rule and minimize the number of county lines cut, in the large urban counties such as Dallas, Tarrant, Harris and

Bexar counties, the population of the county is divided by the ideal population size for a State House District. The redistricting plans for these counties are then considered "drop-in" plans—that is, those plans are independent of the districts in the surrounding counties. In Dallas and Harris counties, the lower court deferred to the state's decision to remove two seats from the Dallas county delegation and one seat from the Harris county delegation. JA 107; JA 104.

Texas asks this Court to "clarify that the district court cannot seek to equalize population among state legislative districts unless the population deviations in the legislatively enacted map violate the law." Appellants' Br. 32. The State misreads *Upham v. Seamon*, 456 U.S. 37 (1982), on this point. *Upham* involved the redrawing of Congressional districts, so allowable population deviations were not even an issue. 456 U.S. at 38. Second, the violation that was "missing" from *Upham* in order to justify the redrawing of the district in question was, at that point in the litigation process, a finding by the Attorney General that the district violated Section 5 of the Voting Rights Act. *Upham* is easily distinguished in this instance, as well, because in that case, the Attorney General had explicitly found no Section 5 violation with the district in question that the court redrew. That is simply not the situation here. The Attorney General challenges the compliance of at least one House District in almost every major urban county in Texas. JA 612-14.

With these "drop-in" county plans, a problem with one district may necessitate changes to every district within the county to accommodate corrections to the "problem" district. And the State's enacted House plan

is rife with problems in urban counties. In the Section 5 case, the United States alleges that the drawing of House District 117 in Bexar County and the removal of House District 149 in Harris County will have a retrogressive effect on minority voters. JA 612-13. The United States further argues that the drawing of House District 93 in Tarrant County, House District 105 in Dallas County, House District 117 in Bexar County, and the removal of House District 149 in Harris County are evidence of impermissible discriminatory intent on the basis of race. JA 614. Even more urban districts were challenged by Defendant-Intervenors in the Section 5 case, and by plaintiffs in the Section 2 and Equal Protection case heard before the lower court. These are all districts in urban counties, and the redrawing of these districts to bring them into constitutional and statutory compliance will have an effect on other districts in those county drop-ins. Given this fact, the lower court's decision to minimize population deviation was proper and in line with guidance from this Court.

Finally, it is significant to note that the State does not even discuss *Cox v. Larios*, 542 U.S. 947 (2004). In *Cox*, this Court refused to adopt a 10% safe harbor for population deviations in state legislative plans and summarily affirmed the lower court's decision striking down, on one-person, one-vote grounds, a state legislative plan that had a less than 10% overall deviation. *Id.* 542 U.S. at 949. The State instead relies on *Brown v. Thomson*, 462 U.S. 835 (1982), decided earlier, for the proposition that state legislative plans with deviations no greater than 10% are presumptively valid. In spite of any presumption of validity for a plan with less than 10% overall deviation, the court below was appropriately sensitive to *Cox v. Larios*,

and the admonition there that "the equal-population principle remains the only clear limitation on improper districting practices, and we must be careful not to dilute its strength." 542 U.S. at 949-950. The court below appropriately sought to achieve *de minimis* population variances in county "drop-in" plans where districts were being challenged as Section 5 violations by the Attorney General.

2. The Lower Court Correctly Applied The Law Governing Interim Plans

Not only did the lower court correctly interpret the cases from this Court that offer guidance on the creation of interim redistricting plans, but the Congressional and House interim plans ordered into implementation by the lower court reflect the conversion of that interpretation into appropriate actual plans. The cases from this Court related to this issue have involved redistricting plans with significantly fewer flaws and thus, the lower court's application of interim redistricting plan principles is bound to look different than in other cases. Despite this fact, the lower court balanced a myriad of complicating issues and produced plans that are fair, defer to the state's legislative policies in an appropriate manner, and will not result in the violation of the rights of minority voters in Texas.

a. The Lower Court Afforded the Enacted Plan As Much Deference as Was Allowable and Appropriate

The State ignores the fact that despite not being compelled by law to defer to the state's enacted plans given their status in preclearance litigation, the court's

interim plans did, in fact, afford a significant level of deference to those plans. Despite saying so in a number of places, Appellants' Br. 27, 33, it is simply untrue that the court below refused "to grant any deference to Texas' legislatively enacted districting maps." *Id.* at 27. The lower court deferred to legislative decisions relating to the number of House seats allocated to "drop in" county delegations. JA 107; JA 104. In the lower court's State House interim plan, 72 districts (nearly 50%) were practically identical to districts in the state's enacted plan. JA 114. In the lower court's Congressional interim plan, 9 districts (25%) were identical to districts in the state's enacted plan. JA 147-48. Given the magnitude of the constitutional and statutory infirmities identified during the Section 5 process, the lower court, despite substantially deferring to the state's enacted plans in a number of ways, could do no more without ratifying those infirmities.

Moreover, the State's argument that the lower court did not appropriately defer to "carefully negotiated urban district lines" is without merit, as it is clear that those lines were not so negotiated. Appellants' Br. 19. The State mischaracterizes the position of the Texas Legislative Black Caucus with regard to the legislative maps, particularly the ones enacted by the state. While the Legislative Black Caucus did announce objections to the interim House plan, the Caucus also intervened as a plaintiff in the litigation before the court below, alleging that the enacted State House plan violates Section 2 and the Equal Protection Clause of the 14th Amendment. *Perez, et al., v. Perry*, et al., No. 5:11-cv-00360 (W.D. Tex.), Docket # 60, 70, 73. The Caucus voluntarily dismissed their complaint in intervention because they thought that other parties involved in the litigation could adequately

protect the rights of Texas voters in that setting. *Perez, et al., v. Perry*, et al., No. 5:11-cv-00360 (W.D. Tex.), Docket # 111. But the Caucus is still a party in the Section 5 litigation, arguing that the state's "carefully negotiated urban district lines," Appellants' Br. 19, were drawn with discriminatory intent and have a retrogressive effect on black voters. Members of the Caucus also testified during the trial in San Antonio that they were left out of all of these alleged "careful" negotiations. JA 885; JA 897-902; JA 875-80. This is also an example that rebuts the State's claims that the majority of the court below simply bowed to every one of the Plaintiffs' claims. Appellants' Br. 18. That is not what happened because the lower court did not adopt any plan proposed by Plaintiffs or by the Texas Legislative Black Caucus.

b. The Inclusion of Coalition and Crossover Districts in the Interim Plans Reflected the Lower Court's Caution in Dismantling Such Districts, But Were Also Justified by Evidence in the Record

In the interim Congressional and State House plans, the lower court explained that it refrained from deconstructing coalition and crossover districts in order to avoid violations of Section 5. JA 178; JA 104-05; JA 144 n. 24. The State attacks those coalition districts in the interim House and Congressional plans because of what "appears to be a concerted effort to reach a 50% threshold of minority citizen voting age population." Appellants' Br. 19. The State's assertion that the court below offered "no legal or factual justification for its creation" of those coalition districts is patently false. *Id.* The lower court never averred that it was required to create coalition

districts. Rather, that court was explicitly clear in its explanation that coalition districts "naturally" arose by the application of neutral redistricting principles and a decision not to consciously dismantle such districts.

For example, the State finds fault with Congressional District 33 in the interim plan. The lower court put this district in the Dallas-Fort Worth metroplex, as did the State in its enacted plan. This decision was based on population growth in that area, as was the State's same decision to do so. JA 146. But, because the population growth in that area was attributable to minority population growth, the interim Congressional District 33 reflected that, in a way that was more respectful of traditional redistricting criteria. The interim plan drew Congressional District 33 in a more compact way than did the state, and the interim plan's district was entirely contained within Tarrant County, unlike Congressional District 33 in the State's plan, which sprawled across numerous counties. Rather than intentionally create a coalition district, the lower court refrained from intentionally fragmenting this cohesive community of minority voters, and this was amply explained in the lower court's order on the interim plan. JA 146-47. To hold that the lower court impermissibly created a coalition district by following traditional, race-neutral redistricting principles rather than violate those traditional principles in the creation of white majority districts, like the State did, would result in turning the Voting Rights Act and the 14th Amendment protections on their head.

Likewise, with House Districts 26, 54 and 149, the lower court found that these coalition districts existed in the benchmark plan. The lower court found that the

minority population in House District 26 had increased from 44 percent in 2000 to 60.6 percent in 2010. JA 178. Thus, House District 26 was a coalition district in the benchmark plan. The lower court found that the State's plan reconfigured that district to make it "irregularly" shaped and that evidence had been presented at trial that this was an attempt to "intentionally dismantle an emerging minority district." *Id.* Likewise, House District 54 was 51.5 percent minority in the benchmark plan, and one fewer county line could be cut by not dismantling this district. JA 110-11. Finally, House District 149, which elects the only Vietnamese-American to the Texas State House of Representatives, was approximately 63 percent minority citizen voting age population in the benchmark plan. JA 104; H100 Red-106 Report, *available at* http://gis1.tlc.state.tx.us/. The State removed that district from Harris County, when evidence showed that its population was growing, rather than removing one of several white majority districts in eastern Harris County that evidence showed had all been consistently losing population over the decade. *Perez, et al., v. Perry*, et al., No. 5:11-cv-00360 (W.D. Tex.), Docket # 137 (Report of Dr. Richard Murray) at 27. In contrast, and in order to avoid retrogression, the lower court followed the benchmark plan and retained House District 149. JA 105. None of these instances are intentional creations of coalition districts—they are simply situations in which the lower court acted to avoid retrogression and refrained from intentionally breaking up geographically-compact communities on the basis of race.

The State asserts that there is no evidence that Latino, African-American and Asian citizens are cohesive in voting patterns, citing to the dissenting judge's opinion

for that proposition. Appellants' Br. 58. But the majority of the court below made no such ruling, purposefully and appropriately refraining from ruling on the merits of Plaintiffs' claims. Moreover, as indicated in the opening round of briefing in this matter, there was an abundance of evidence in the record of political cohesion amongst these groups in certain areas of the state, and this evidence justified the drawing of those districts even had the lower court decided that such districts were compelled by Section 2 of the Voting Rights Act.

The lower court also tread carefully when it came to crossover districts—the court did not "create" them, but did not feel that it could deconstruct them without running afoul of Section 5. Specifically, in the Congressional interim redistricting plan, the court below refrained from fragmenting the cohesive minority population in Congressional District 25 in order to achieve "the goals of maintaining the status quo and complying with Section 5." JA 144-45 n.24. The subsequent memorandum opinion of the D.C. District Court takes the same position that this is correct and compliant with Section 5 of the Voting Rights Act. *Texas*, 2011 WL 6440006, at *34-37.

Despite Texas' claims to the contrary, it is not "plainly permissible for the Texas Legislature to choose not to create those districts." Appellants' Br. 32. Coalition and crossover districts enable minority voters to elect the candidates of their choice. *Texas*, 2011 WL 6440006, at *36. Thus, it is appropriate to evaluate the loss of those districts in a retrogression analysis. *Id.* Finally, the intentional fragmenting of minority groups, on the basis of race, so that they will not be able to elect a candidate of their choice is a clear violation of the Equal Protection

Clause and the intentional discrimination bar in Section 2 of the Voting Rights Act.

c. The Interim Plans Were Not Racial Gerrymanders Under Any Reasonable Understanding of the Term

The State's assertions that the lower court's interim plans were racial gerrymanders are not consistent with this Court's rulings on what constitute impermissible uses of race in redistricting. The lower court has justified the addition of minority districts on the basis of minority population growth, which is undeniably true. JA 146; JA 178; JA 105-06; JA110. Given that fact, this Court has identified ways to demonstrate that race predominated in drawing electoral districts (and thus warrants the application of strict scrutiny). First, strict scrutiny may be appropriate where the district is so bizarrely shaped that no other reason besides race can explain the shape. *Shaw v. Reno*, 509 U.S. 630, 658 (1993). Similarly, other evidence may prove that race was the predominant factor in drawing the district lines. *See Miller v. Johnson*, 515 U.S. 900, 920 (1995). However, this Court has stated that "[s]trict scrutiny does not apply merely because redistricting is performed with consciousness of race... For strict scrutiny to apply, the plaintiffs must prove that other legitimate districting principles were 'subordinated' to race." *Bush v. Vera*, 517 U.S. 952, 958-59 (1996). Thus, racial gerrymanders are districts that are bizarrely shaped or districts that otherwise subordinate traditional redistricting criteria to race. The lower court's interim plans do neither.

The State's criticisms of the interim plans as subordinating traditional redistricting principles to

race are disingenuous at best, and often misleading. The interim plans are as respectful of traditional criteria as the State's plan, and, in certain situations, more respectful of traditional districting criteria. Contrary to the State's telling of the story, the county line rule is far from the only traditional districting principle. Appellants' Br. 59-60. But, even if that is considered the ultimate traditional districting criteria in Texas, the State's argument is still fatally flawed. The lower court's interim congressional plan cuts *fewer* county lines than did the State's congressional plan (the interim plan cut 23 counties, while the state's plan cut 33 counties). The lower court's interim house plan cut the same number of counties as the state's enacted House plan (24 county lines cut). JA 116 n. 24. Thus, arguments that the lower court's plans were less respectful of the Texas Constitutional county line rule are meritless.

Additionally, with regard to other traditional principles, such as respect for political subdivisions and compactness, the lower court's plans are again as respectful or more respectful of those principles, but not less. The State criticized the interim congressional plan for dividing the city of Arlington in Congressional District 33. Appellants' Br. 23. While Congressional District 33 in the enacted plan contains all of Arlington, it also contains portions of three different counties. Congressional District 33 in the interim plan is wholly contained within Tarrant County. MJA 2; MJA 1. Thus, the interim plan is more respectful of county political subdivisions, and the enacted plan, is, in that one instance, more respectful of city political subdivisions. However, turning to the city of Austin, it becomes clear that respect for city political subdivisions was not a guiding principle used by the state legislature. The State's enacted congressional plan splits

Austin into 6 different districts (Congressional Districts 25, 35, 21, 10, 17, and 31), while the interim plan only splits the city into 3 districts (Congressional Districts 25, 10, and 21). MJA 2; MJA 1.

In a number of problematic districts, the lower court noted that the districts drawn by the State were non-compact and irregularly shaped. The districts that the lower court drew were more compact. JA 146; JA 175; JA 178; JA 108. The simple truth is that the lower court's interim plans did not, in any way, subordinate traditional districting principles to race, and this is conclusively proven by comparison to the plans that the State enacted.

Also, Texas asks this Court to ignore its Supremacy Clause rulings and rule that "traditional, race-neutral redistricting principles such as Texas' constitutional county-line rule should never be subordinated to race-based considerations." State's Brief 60. This position directly contradicts this Court's decision in *Bartlett v. Strickland*, 129 S. Ct. 1231 (2009), where it was assumed that compliance with Section 2 of the Voting Rights Act would justify violating North Carolina's state constitutional whole county provision. *Id.* at 1239. Adopting the position urged by Texas would be a radical departure from well-established Supremacy Clause rulings and is unsupported by this Court's precedents.

Finally, the State notes that there is no statutory or constitutional guarantee of proportional representation on the basis of race. Appellants' Br. 56. This is true, but when minority population growth accounted for nearly 90 percent of all population growth in the state over the prior decade, and no net additional minority districts

were created despite the apportionment of four new additional congressional districts to the state based on that minority population growth, this creates vote dilution and is evidence of intentional discrimination, both of which are legally prohibited. *Texas*, 2011 WL 6440006, at *39-40. It is indicative of keeping minority voters "in their place," and that is prohibited under the purpose prong of Section 5 of the Voting Rights Act. H.R. REP. No. 109-478, at 43. The addition of new minority districts in this situation, rather than being racial gerrymandering, is a natural result of that population growth. For example, the placing of Congressional District 33 in Tarrant County was in response to the enormous population growth in that area, a large percentage of which happened to be minority population growth. JA 146. Again, this is not remarkable in a state where nearly 90% of the population growth in the last decade was growth in minority population. JA 133. It takes a conscious race-based effort to keep minority representation that artificially depressed and disproportionate to population demographics like those. The only redistricting plans that can credibly be charged with being racial gerrymanders are those drawn by the State—plans that subordinate traditional redistricting principles in order to draw districts to advantage Anglo voters.

B. Ordering the Implementation of the State's Maps is Inconsistent with this Court's Prior Rulings and with the Intent of the Voting Rights Act

Finally, the implementation of the State's enacted plans, even on an interim basis, would be fundamentally unjust and inconsistent with the intent of the Voting Rights Act. Texas is the party seeking an end run around voting

rights protections. And given this Court's recognition of Texas' "long history of racial discrimination against Latinos and Blacks," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 439 (2006), it is simply inadequate to assume that the State's enacted plans ensure that minority voting rights will not be diluted or diminished. The Voting Rights Act exists because such assumptions in the past resulted in severe and longstanding discriminatory voting practices.

Texas has not been able to obtain preclearance for its enacted redistricting plans in a timely fashion, and the burden is on it to do so. Blaming Intervenors in the preclearance action for this delay is distracting and inaccurate. Appellants' Br. 11. Notably absent from the State's recounting of events is the point at which it flatly turned down a more expedited path to trial in favoring of pursuing a motion for summary judgment on factually-sensitive issues and in the face of opposition from the Department of Justice and Intervenors. JA 922. Judge Collyer offered the State a more expedited route by asking if, after receiving the answer of the Department of Justice and noting that the Attorney General opposed preclearance on both purpose and effect grounds, if the State would not "rather say, 'Okay, let's just go to trial and get this done, instead of try summary judgment.'" JA 923. The State declined to just "get this done." The blame for any delay in the preclearance process can only be laid squarely on the doorstep of the State.

Additionally, Texas' position is logically inconsistent on a number of levels, and this indicates that the State's primary concern is not a just result. The State argues that a preliminary injunction standard should apply, and

that changes should only have been made to the enacted plan insofar as those changes were directed to remedying identified constitutional or statutory problems with the enacted plan. Appellants' Br. 42. But if that position is correct, that is exactly what the dissenting judge—Judge Smith—did. For example, Judge Smith identified four places in the enacted House plan where the plaintiffs alleged "colorable claims of statutory or constitutional infirmity." JA 191-194.[1] Yet Texas does not urge this Court to order the adoption of Judge Smith's map. Texas wants its enacted map, in spite of all its substantial problems, to be used in the upcoming elections, even on an interim basis. This inconsistency all but proves that Texas is most interested in avoiding any interference from the Voting Rights Act.

The implementation of the state's legislatively enacted redistricting plans, with all the accompanying constitutional and statutory infirmities, will cause enormous and permanent damage to minority voters across the state. Texas' arguments that such a resolution would only be interim and would not affect the preclearance process for permanent changes are flimsy. Appellants' Br. 54. Elections matter—the conducting of even one election cycle under a unlawful plan would have lasting implications and causes irreparable injury to one of the most precious rights in this country—the right to vote. *Reynolds v. Sims*, 377 U.S. 533, 562, 565 (1964)

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1. Additionally, as the NAACP Plaintiffs demonstrated in their opening brief, that there was enough evidence of Section 2 violations and intentional discrimination before the lower court such that the court could reasonably meet that preliminary injunction standard of likelihood of success on the merits. NAACP Merits Br. 29-31.

Should this Court decide that some further guidance is necessary in crafting the interim plan, there is no reason to think that the court below cannot follow such instructions and rapidly put into place an electoral system for the next election. Imposition of the State's enacted plans, in flagrant avoidance of the Section 5 protections for minority voters, cannot be predicated solely on the baseless assumption that the lower court cannot follow this Court's instructions in a timely manner. Appellants' Br. 31.

The State itself acknowledged that an "interim reapportionment order requires reconciling the requirements of the Constitutional with the goals of state political policy. Appellants' Br. 36 (internal quotations omitted). That is what this Court has instructed. *Connor*, 431 U.S. at 414. Yet, what the State asks for is complete deferral to the State's enacted plan. Appellants' Br. 54. This result would be fundamentally contrary to this Court's prior rulings and to the history and purpose of the Voting Rights Act, which is to protect the rights of minority voters from jurisdictions with a long history of discrimination—to protect them from Texas.

III. CONCLUSION

In conclusion, the NAACP and Congresspersons Appellees respectfully request that this Court lift the stay on the implementation of interim plans crafted by the District Court in the Western District of Texas and affirm that court's holding as to the standards that apply to the crafting of such plans.

Dated: January 3, 2012

Respectfully submitted,

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AMICUS CURIAE BRIEF

Nos. 11-713, 11-714 and 11-715

In the Supreme Court of the United States

RICK PERRY, GOVERNOR, ET AL., APPELLANTS
v.
SHANNON PEREZ, ET AL.

RICK PERRY, GOVERNOR, ET AL., APPELLANTS
v.
WENDY DAVIS, ET AL.

RICK PERRY, GOVERNOR, ET AL., APPELLANTS
v.
SHANNON PEREZ, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING AFFIRMANCE IN PART AND VACATUR IN PART

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QUESTIONS PRESENTED

The United States will address the following questions:

1. Whether the district court properly enjoined the State of Texas's proposed redistricting plans "unless and until" those plans are precleared pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

2. Whether, having enjoined the State's unprecleared redistricting plans pursuant to Section 5, the district court should then have ordered those same redistricting plans into effect as "interim" plans.

3. Whether the district court adequately justified the ways in which its interim plans modify the plans currently in effect.

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In the Supreme Court of the United States

No. 11-713

RICK PERRY, GOVERNOR, ET AL., APPELLANTS

v.

SHANNON PEREZ, ET AL.

No. 11-714

RICK PERRY, GOVERNOR, ET AL., APPELLANTS

v.

WENDY DAVIS, ET AL.

No. 11-715

RICK PERRY, GOVERNOR, ET AL., APPELLANTS

v.

SHANNON PEREZ, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING AFFIRMANCE IN PART AND VACATUR IN PART

INTEREST OF THE UNITED STATES

This case presents questions regarding interim redistricting plans that a court may adopt when a State has failed to obtain preclearance for its districting plans under Section 5 of the Voting Rights Act of 1965 (VRA), 42 U.S.C. 1973c. The United States has primary responsibility for enforcing Section 5. *Ibid.*; 42 U.S.C. 1973j(d). In parallel litigation, the United States is opposing appellant Texas's request for judicial preclearance of the state House and congressional plans. The United States also submitted statements of interest in the proceedings below.

STATEMENT

1. Section 5 of the VRA prohibits a covered jurisdiction from implementing a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" without first obtaining either judicial or administrative preclearance. 42 U.S.C. 1973c(a). A jurisdiction may seek judicial preclearance by bringing a declaratory-judgment action before a three-judge district court in the District of Columbia. Or it may obtain administrative preclearance from the Attorney General. 42 U.S.C. 1973c(a). A jurisdiction may also simultaneously seek both administrative and judicial preclearance. See App., *infra*, 1a-3a.

Under either procedure, the jurisdiction has the burden of demonstrating that the voting change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of" a prohibited ground. 42 U.S.C. 1973c(a). The "effect" prong precludes preclearance of voting changes that "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral

franchise," measured against the jurisdiction's existing—or "benchmark"—practice. *Beer* v. *United States*, 425 U.S. 130, 141 (1976); see *Reno* v. *Bossier Parish Sch. Bd.*, 520 U.S. 471, 478 (1997). Subsections 5(b) and (d) make it clear that the retrogression prong is meant to prohibit changes from the benchmark plan that will, because of race, color, or membership in a language minority, "diminish[] the ability * * * to elect their preferred candidates of choice." 42 U.S.C. 1973c(b). The "purpose" prong precludes preclearance of voting changes motivated by "any discriminatory purpose." 42 U.S.C. 1973c(c).

Administrative preclearance is time-limited and designed for more expeditious processing. Private parties may submit information to the Attorney General concerning a submission, but are not participants in the administrative process. The Attorney General must object within 60 days after the submission of a proposed change (provided the submission contains sufficient information), or else the change is precleared automatically. 42 U.S.C. 1973c(a).[1] The Attorney General's decision to interpose no objection is unreviewable. *Morris* v. *Gressette*, 432 U.S. 491, 501-505 (1977). If the Attorney General objects, however, the jurisdiction may still seek judicial preclearance.

In a judicial preclearance action, private parties can intervene and may oppose voting changes that the Attorney General does not oppose. See *City of Richmond* v. *United States*, 422 U.S. 358, 366 (1975) (district court refused to preclear a plan submitted to the court by City

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[1] If the submission does not contain sufficient information, the Attorney General may request additional information, but must then make a determination within 60 days after receiving complete information. 28 C.F.R. 51.37.

and Attorney General as a consent judgment, but opposed by an intervenor). With respect to either method of preclearance, "unless and until" a voting change is precleared, Section 5 bars the jurisdiction from implementing the change. 42 U.S.C. 1973c(a).

2. a. Texas has been covered by Section 5 since 1975. 28 C.F.R. Pt. 51 App. As this Court recently explained, "Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process." *LULAC* v. *Perry*, 548 U.S. 399, 439 (2006) (internal quotation marks omitted).

The 2010 Census showed that Texas's population had increased by nearly 4.3 million since 2000. Minorities accounted for the vast majority of the growth: the Latino population increased by 2,791,255, the African-American population by 522,570, and the white population by fewer than 465,000. The population changes required Texas to redraw its legislative and congressional districts and also entitled it to four new congressional seats, for a total of 36. J.A. 133-134.

b. Texas received redistricting data from the Census Bureau on February 17, 2011. Appellants' Br. 8. The Texas Legislature passed a redistricting plan for the state House of Representatives on May 2, 2011, and a plan for the state Senate on May 17, 2011. On June 17, 2011, one month after the Legislature passed the Senate plan, the Governor signed both bills. J.A. 167, 417. The State did not submit either plan for preclearance at that time. The Legislature passed a plan for Texas's congressional districts on June 24, 2011, and the Governor signed that bill on July 18, 2011. J.A. 134. The Legisla-

ture also enacted a plan for the State Board of Education (BOE).

Texas did not submit any of the four plans to the Attorney General for administrative preclearance. Instead, on July 19, 2011, more than a month after the Governor signed the redistricting plans for the Legislature, Texas sought judicial preclearance for all four plans. *Texas* v. *United States*, No. 11-cv-1303 (D.D.C.) (*Texas*). Texas "filed under the assumption that Section 5 complies with the United States Constitution," *Texas*, Docket entry No. 1, at 1, and has not challenged the constitutionality of Section 5.

The United States answered the complaint on September 19, 2011, the same day by which it would have responded to an administrative-preclearance submission. J.A. 637-647. The United States admitted that the State was entitled to preclearance of the BOE and Senate plans, but opposed preclearance of the House and congressional plans. J.A. 646. Additional defendants intervened, and some intervenors opposed preclearance of the Senate plan. *E.g.*, J.A. 630-631. Because no party opposed the BOE plan, the court precleared it. J.A. 549 n.1.

c. Early in the litigation, the United States suggested an expedited trial date on or after October 17, 2011. Texas initially suggested an even earlier trial date. See *Texas*, Docket entry No. 10, at 2 n.2 (Aug. 11, 2011). But the proceedings were diverted when Texas filed a summary-judgment motion on September 14.

In opposing Texas's motion, the United States contended that the House and congressional plans are discriminatory in both purpose and effect. J.A. 552-606. On the effect prong, the government's evidence showed that the House plan was retrogressive because it dis-

mantled several districts in which Hispanics were able to elect their candidates of choice, and reduced the number of minority ability-to-elect districts from 50 to at most 46. J.A. 561-575. The congressional plan resulted in nearly 500,000 fewer Hispanic voters living in ability-to-elect districts. J.A. 576-585. And both plans bore indicia of discriminatory purpose. J.A. 590-598. For instance, precincts were carefully split so that districts would include certain voters and exclude others; the *only* basis for distinguishing among voters at that level of intra-precinct detail was race, because political-performance data do not exist at that level. J.A. 592. And the redistricting process excluded minority representatives from participation. J.A. 594-595.

The D.C. district court unanimously denied the State's motion on November 8, 2011, six days after the motion hearing. The court concluded that the State had used an improper methodology to determine which districts afford minority voters the ability to elect their candidates of choice, precluding summary judgment on the plans' retrogressive effect. J.A. 550-551; see *Texas*, 2011 WL 6440006, at *12-*15 (Dec. 22, 2011). The court also denied summary judgment on purpose grounds, concluding that "Texas ha[d] failed to demonstrate that the Plans do not have the purpose of 'denying or abridging the right to vote on account of race or color.'" *Id.* at *21. Indeed, "Texas has not disputed many of the Intervenors' specific allegations of discriminatory intent." *Id.* at *22.

Trial is scheduled for January 17-26, 2012, with closing arguments on February 3, 2012.

3. The instant litigation consolidates numerous actions brought in the Western District of Texas that challenge Texas's redistricting plans under Section 2 of the

VRA, 42 U.S.C. 1973, and the Constitution. See J.A. 134-135. The district court held a trial on those claims, but indicated that it will not adjudicate them while the plans remain unprecleared. J.A. 95-96. The court has enjoined the State from implementing the plans until they have been precleared. J.A. 222-224; see J.A. 66.

On October 4, 2011, the court below ordered the parties to propose redistricting plans in the event it became necessary to adopt interim plans. J.A. 215-222. The State responded by urging the court to order the unprecleared plans into effect, unmodified. J.A. 280-291. On November 23 and 26, after receiving comments, the court adopted interim House, Senate, and congressional plans. J.A. 132-155, 166-204, 406-410. Judge Smith dissented from the House and congressional plans.

SUMMARY OF ARGUMENT

The fundamental object of Section 5 is to require a covered jurisdiction to obtain preclearance before a voting change may take effect. Appellants nonetheless seek immediate implementation of the enacted redistricting plans to govern the upcoming elections, even though those plans have yet to gain preclearance through the judicial-preclearance proceedings Texas opted to pursue. The terms of the statute, and this Court's decisions, foreclose appellants' argument.

I. Section 5 expressly bars implementation of a voting change "unless and until" the covered jurisdiction obtains administrative or judicial preclearance. When a local district court encounters a covered jurisdiction seeking to administer an unprecleared change, the court does not examine the likelihood that preclearance will be granted or assess the strength of the arguments for or against preclearance; nor does it leap forward to ad-

dress any non-Section 5 challenges to the proposed change before it is precleared. Instead, as long as the change is subject to Section 5 and has yet to gain preclearance, the local district court must enjoin it. That straightforward rule, this Court has explained, vindicates Congress's decision to make centralized, consistent review in the D.C. district court (or by the Attorney General) the exclusive method of determining the validity of a voting change under Section 5.

Here, accordingly, the district court properly enjoined Texas's plans pending preclearance. Appellants insist that the court should first have found a likely violation of law, but allowing the unprecleared maps to take effect would have violated Section 5 (and allowing the preexisting maps to remain in effect would have violated the Constitution's one-person-one-vote principle). Contrary to appellants' view, the court was not required to—indeed, was forbidden to—evaluate the merits of the competing positions in the pending preclearance proceeding. And that is true regardless of whether the State is actively pursuing preclearance or acting in good faith. A highly indeterminate test turning on the extent to which the State may be actively pursuing preclearance finds no support in the statute. Rather, Section 5 prescribes a bright-line rule: a voting change cannot take effect "unless and until" it is precleared.

II. Appellants cannot avoid the clear dictates of Section 5 by contending that the unprecleared plans should go into effect on an interim basis. There is no basis for allowing any temporary circumvention of the preclearance requirement, much less one of the magnitude appellants seek. Indeed, had the district court attempted to order the use of the unprecleared plans as the interim plans, its order would have been clearly reversible error

under this Court's decisions. *E.g.*, *Lopez* v. *Monterey County*, 519 U.S. 9, 22 (1996).

Appellants err in arguing to the contrary based on *Upham* v. *Seamon*, 456 U.S. 37 (1982) (per curiam). In that case, the Attorney General determined that the State had satisfied its burden under Section 5, except as to two districts. In that context, this Court held, a local district court's interim plan should not have disregarded aspects of the State's plan as to which the Attorney General determined the State had met its burden. Here, by contrast, Texas has yet to carry its burden, even in part. To the contrary, the D.C. district court before which Texas elected to proceed has found triable evidence of a violation of Section 5—including evidence that the plans as a whole reflect a discriminatory purpose.

Any requirement that courts implement unprecleared plans as interim plans would distort Section 5's incentive structure, which encourages prompt submission by precluding enforcement of unprecleared changes. Nor is appellants' rule necessary to discourage intervenors from delaying the preclearance process: there is no necessary reason that parties would always have an incentive to favor interim maps, and the preclearance process in any event includes built-in means of expedition. Those means include the time-limited process of administrative preclearance, which the State here chose to forgo altogether. Moreover, the State certainly is entitled to schedule the Nation's earliest 2012 congressional primary, to take the time it requires to consider and enact redistricting plans, and to seek summary judgment in the judicial-preclearance proceeding; but those choices—foreseeably—diminish the likelihood of a Section 5 determination before the scheduled elec-

tions, and thus heighten the need for court-created interim maps.

III. Because the district court was not required to use the State's unprecleared maps as the basis for the interim maps, it properly exercised its discretion in formulating interim plans. While the plans in substantial measure are justified by the need to avoid violations of the VRA while respecting State districting principles, the court should have further explained certain aspects of its interim House and congressional plans. As to the House plan, because the court's addition of three new ability-to-elect districts enabled it to avoid retrogression without also restoring all 50 of the preexisting minority ability-to-elect districts, it should have further explained its decision to do so. As to the congressional plan, the court should have given additional explanation of its reasons for drawing two of the State's four new seats as ability-to-elect districts while also restoring all of the preexisting ability-to-elect districts. Finally, while appellants are wrong in suggesting that coalition districts are categorically unprotected by the VRA, the district court failed to make the necessary predicate findings of cohesion among minority groups before including coalition districts in its plans. A remand to address these issues would be appropriate.

IV. Appellants argue that there is no time for a remand and this Court therefore should designate the unprecleared maps as the interim maps. Insofar as this Court is required to choose between either the State's unprecleared plans or the interim plans drawn below, it should select the latter. Even if the court-drawn plans may—pending further explanation—insufficiently adhere to state redistricting principles in certain respects, those plans are preferable to ones whose very use would

contravene Section 5's preclearance regime and whose content violates Section 5 in purpose and effect.

ARGUMENT

I. THE DISTRICT COURT PROPERLY ENJOINED THE UNPRECLEARED PLANS AND DREW INTERIM PLANS

A. A Covered Jurisdiction May Not Enforce A Redistricting Plan Until That Plan Receives Preclearance

1. Section 5's fundamental object is to require covered jurisdictions to obtain judicial or administrative preclearance before enforcing voting changes. 42 U.S.C. 1973c(a). "A voting change in a covered jurisdiction 'will not be effective as la[w] until and unless cleared' pursuant to one of these two methods." *Clark* v. *Roemer*, 500 U.S. 646, 652 (1991) (brackets in original) (quoting *Connor* v. *Waller*, 421 U.S. 656, 656 (1975) (per curiam)).

Accordingly, "unless and until" a voting change is precleared, 42 U.S.C. 1973c(a), either the United States or an appropriate private plaintiff is "entitled to an injunction prohibiting implementation of the change." *Lopez* v. *Monterey County*, 519 U.S. 9, 20 (1996); *Clark*, 500 U.S. at 652-653; *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 572 (1969). Such an injunctive action is brought in the local district court, whereas a preclearance action may be brought only in the D.C. district court. See *id.* at 557-560.

When a plaintiff seeks to enjoin a change that has not been precleared, the local district court does not ask whether the change is likely to be precleared, or what the basis of a Section 5 objection might be; as this Court has repeatedly recognized, Congress has expressly denied local district courts jurisdiction to decide preclearance matters. 42 U.S.C. 1973*l*(b); see *Lopez*, 519 U.S. at 23-24; *McDaniel* v. *Sanchez*, 452 U.S. 130, 150-151 &

n.31 (1981); *United States* v. *Board of Supervisors*, 429 U.S. 642, 646 (1977) (per curiam); *Perkins* v. *Matthews*, 400 U.S. 379, 385-386 (1971). Indeed, until a change is precleared, any constitutional or other challenge to the merits of that change is premature. *Branch* v. *Smith*, 538 U.S. 254, 265-266 (2003) (vacating district court's alternative ruling that unprecleared plan was legally flawed); *id.* at 283-284 (Kennedy, J., concurring); *Connor* v. *Waller*, 421 U.S. at 656. Rather, the local district court is "limited to the determination whether a [voting] requirement is covered by § 5, but has not been subjected to the required federal scrutiny." *Board of Supervisors*, 429 U.S. at 645-646 (alteration in original; citation and internal quotation marks omitted). Until that "federal scrutiny" results in a preclearance determination, the change simply may not take effect, and the local district court must enjoin it.

2. The statute expressly provides that merely *submitting* a change for preclearance does not entitle the jurisdiction to put the change into effect. A covered jurisdiction seeking to implement a change may "institute an action" in the D.C. district court, but the change may not be implemented "unless and until the court enters * * * judgment" granting preclearance. 42 U.S.C. 1973c(a). Or the change may be "submitted * * * to the Attorney General," but it may not "be enforced" unless "the Attorney General has not interposed an objection within sixty days after such submission" or "affirmatively indicate[s] that such objection will not be made." *Ibid.* Indeed, the very purpose of the preclearance requirement is to "preserv[e] the status quo until the Attorney General or the courts have an opportunity to evaluate a proposed change." *Young* v. *Fordice*, 520 U.S. 273, 285 (1997).

Thus, if a change has not been precleared, it may not take effect—whether preclearance has been denied, is pending, or was never sought at all. See, *e.g.*, *Branch*, 538 U.S. at 265-266 (affirming injunction issued after State sought preclearance). Local district courts asked to enjoin an uncleared plan are not to adjudicate constitutional or VRA challenges to the plan, because the plan may never take effect and because premature review of its merits in a local district court risks improperly interfering with the preclearance process in the D.C. district court. *Ibid.* As Justice Kennedy has explained:

> To be consistent with the statutory scheme, the district courts should not entertain constitutional challenges to nonprecleared voting changes and in this way anticipate a ruling not yet made by the Executive. The proposed changes are not capable of implementation, and the constitutional objections may be resolved through the preclearance process.

Id. at 283-284 (Kennedy, J., concurring); see *Board of Supervisors*, 429 U.S. at 646-647.

3. Appellants therefore err in asserting (Br. 48-50) that an injunction pending preclearance may issue only if the jurisdiction has been "recalcitrant." Section 5 makes no such subjective distinctions. See *Branch*, 538 U.S. at 265-266 (affirming injunction against change that was promptly submitted for preclearance).[2] The obligation to obtain preclearance before enforcing a voting change does not turn on the purity of the State's motives or the substance of the change. See *Young*, 520 U.S. at 284-285.

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[2] Even *Lopez*, on which appellants rely, did not turn on the jurisdiction's recalcitrance. See, *e.g.*, 519 U.S. at 24 (local district court bore partial responsibility).

Appellants nonetheless repeatedly assert (Br. 4, 27-28, 30, 35) that they are entitled to a "presumption of good faith," but they pull that phrase from a case that did not involve Section 5. *Miller* v. *Johnson*, 515 U.S. 900, 916 (1995). Under Section 5, a covered jurisdiction seeking preclearance must *affirmatively establish* that the change "neither has the purpose nor will have the effect of denying or abridging the right to vote" protected by the VRA. 42 U.S.C. 1973c(a); see, *e.g.*, *Georgia* v. *Ashcroft*, 539 U.S. 461, 471 (2003); *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 469 (1987). Seeking preclearance is a necessary first step in that determination, but is only a first step.

Moreover, appellants' suggestion (Br. 49, 52) that state law take effect "on an interim basis" based on how "actively" the jurisdiction is litigating is unworkable. Merely seeking preclearance plainly is not enough; even the jurisdiction in *Lopez* filed a preclearance action, but later abandoned it, 519 U.S. 15-16, behavior appellants (Br. 49) call "recalcitrant." Nor would it make sense for the enforceability of state law to vary from day to day, based on federal judges' assessment of how fast a jurisdiction's lawyers answer interrogatories or produce documents. Section 5 itself provides no explicit timeframe for seeking preclearance precisely because a change cannot be enforced unless and until it is precleared. Section 5's text prescribes a readily administrable, bright-line rule: either a voting change has been precleared, or it has not.

B. Pending An Enforceable State Redistricting Plan, Federal Courts May Draw An Interim Plan To Effectuate The Constitutional "One Person, One Vote" Guarantee

Legislative districts must be adjusted following the decennial census to comply with the constitutional rule of "one person, one vote." See, *e.g.*, *Georgia*, 539 U.S. at 488 n.2. When (for example) a covered jurisdiction fails to obtain preclearance for new districts, the duty of adopting an interim remedy for the one-person-one-vote violation falls to the federal courts. See, *e.g.*, *Branch*, 538 U.S. at 261-262; *LULAC* v. *Perry*, 548 U.S. 399, 415 (2006) (opinion of Kennedy, J.); see also *Growe* v. *Emison*, 507 U.S. 25, 36-37 (1993).

That is a difficult and "unwelcome obligation," *Connor* v. *Finch*, 431 U.S. 407, 414-415 (1977), but the federal courts undertake it to ensure that elections will go forward in compliance with the Constitution. See *Branch*, 538 U.S. at 272. Indeed, they do so only once it becomes clear that no state-enacted map will take effect in time. *Growe*, 507 U.S. at 34. And any court-drawn map is superseded if a state-drawn map is later adopted and precleared. *LULAC*, 548 U.S. at 416 (opinion of Kennedy, J.).

C. The District Court Properly Enjoined The State's Plans Pending Preclearance And Prepared Interim Plans In Case The State's Plans Are Not Precleared In Time

None of the three enacted plans in this case has been precleared. As a result, enforcing those plans would violate Section 5, and the district court was required to enjoin them. J.A. 66, 222-224.

With the State's plans not yet enforceable, the districts from the previous decade remain on the books. Because of variable population growth, those districts

violate the constitutional one-person-one-vote principle. Accordingly, it was the local district court's "unwelcome" responsibility to prepare interim plans.

Appellants contend repeatedly that the district court should not have diverged from the State's proposed—but unprecleared—maps without finding a likely violation of federal law. But the court *did* act to prevent both a VRA violation and a constitutional violation: allowing the State's unprecleared maps to take effect would violate Section 5, and holding the 2012 elections in last decade's malapportioned districts would violate the Constitution. Under numerous decisions of this Court, the local district court was required to enjoin the unprecleared plans without purporting to predict whether the changes will eventually pass muster under Section 5 or any other provision. See pp. 11-14, *supra*.

Appellants contend (Br. 50-51) that it would be "absurd" for district courts to enjoin unprecleared voting changes and to adopt interim relief while preclearance is pending, without making at least a "*preliminary* assessment" of the voting change's alleged flaws. But Section 5, by requiring that *every* change secure preclearance and by dividing enforcement responsibility between local and D.C. district courts, precludes local courts from denying injunctive relief based on a prediction—"preliminary" or otherwise—about what the D.C. district court or the Attorney General will, or should, do. "[O]nly the [D.C. district court] has jurisdiction to consider the issue of whether a proposed change actually discriminates on account of race" in violation of Section 5. *Board of Supervisors*, 429 U.S. at 646. And Congress had sound reasons for confining the jurisdictional grant to that court: providing "centralized review" to ensure "that recurring problems will be re-

solved in a consistent and expeditious way." *Lopez*, 519 U.S. at 23 (quoting *McDaniel*, 452 U.S. at 151).

Thus, in *Branch*, the local district court enjoined a state plan that had been submitted for preclearance and drew its own plan. This Court affirmed, purely on the "ground that the state-court plan had not been precleared and had no prospect of being precleared in time for" the filing deadline. 538 U.S. at 265; see *id.* at 258. On appellants' theory, the injunction was improper unless the private plaintiffs in the local district court had demonstrated some likely legal flaw in that plan. That is not what the Court held. To the contrary, it *vacated* the district court's alternative ruling that the state plan was constitutionally flawed. *Id.* at 265-266.

Furthermore, requiring private plaintiffs seeking a Section 5 injunction in a local district court to show that *the Attorney General* will likely succeed on the merits in the D.C. district court—where those plaintiffs may not even be parties—hardly fits with the standard principles of equity that appellants seek to invoke, much less with Section 5. Indeed, as four Members of the Court pointed out in *Branch*, the constitutional flaws of an unprecleared plan "could not cause [private plaintiffs] injury" until the plan is precleared. 538 U.S. at 284 (Kennedy, J., concurring). Instead, the only injury that plaintiffs need establish is that a covered jurisdiction is seeking to enforce a voting change without obtaining preclearance.

II. THE DISTRICT COURT WAS NOT REQUIRED TO ADOPT THE STATE'S UNPRECLEARED PLANS

While Texas's plans therefore cannot go into full effect until they are precleared, appellants urge (Br. 54-55) that the district court should have adopted Texas's plans on an "interim" basis. And they urge this Court to

order the unprecleared districts into effect, *in toto*, despite the substantial Section 5 objections already raised by the Attorney General and appellees. That contention is unprecedented, and it is wrong. *Pre*-clearance comes before effectiveness, not after. Only after the preclearance question has been adjudicated does "deference" to the State's enacted plan come into play. If the State carries its burden and gains preclearance, the State's plan takes effect; if the State carries its burden only as to some parts of the plan, those parts may be incorporated into a remedial plan that corrects the identified Section 5 violation; if, as here, the State has yet to carry its burden either in whole or in part, its plan remains unenforceable.[3]

A. When Preclearance Is Pending, The State May Not Demand That The Court Order Its Plan Into Effect On An Interim Basis

Section 5's preclearance requirement applies whether the voting change is temporary or permanent. See 42 U.S.C. 1973c(a); *Presley* v. *Etowah County Comm'n*, 502 U.S. 491, 501 (1992) ("[A]ll changes in voting must be precleared"); *Young*, 520 U.S. at 283-285. A State may not circumvent the preclearance requirement by claiming that it wants to change the election rules only temporarily. Here, moreover, the magnitude of the proposed voting change—even if temporary in duration—bears emphasis. Texas seeks temporarily to avert preclear-

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[3] Because the district court was not required to defer to the State's maps, it also was not required to defer to the State's desired population deviations between districts, as appellants argue (Br. 61-62). When drawing a districting plan, federal courts are required to achieve de minimis population deviations. *Chapman* v. *Meier*, 420 U.S. 1, 23, 27 (1975).

ance of three statewide redistricting plans covering elections to over 200 federal and state legislative seats, each potentially involving party primaries and runoffs. And needless to say, the results of those elections can have profound and lasting implications for the makeup of the State's legislative delegations and the content of the State's laws.

At any rate, any voting change by a covered jurisdiction, regardless of its significance, may not be given effect—on an interim basis or otherwise—unless and until it is precleared. Accordingly, this Court has held that a covered jurisdiction cannot put its voting change temporarily into effect by securing a court order from a local district court. Although a remedial order crafted by a federal district court need not be precleared, *Connor* v. *Johnson*, 402 U.S. 690, 691 (1971) (per curiam), a voting change crafted by the jurisdiction and entered by the court remains the jurisdiction's handiwork and, as such, is unenforceable unless precleared. *Lopez*, 519 U.S. at 22; *McDaniel*, 452 U.S. at 153; 28 C.F.R. 51.18(a). A jurisdiction "seek[s] to administer" a voting change and thus triggers Section 5, 42 U.S.C. 1973c(a), when it asks a court to order the change. *McDaniel*, 452 U.S. at 146; accord *Hathorn* v. *Lovorn*, 457 U.S. 255, 265 n.16 (1982); cf. *Branch*, 538 U.S. at 264-265. The Court adopted that reading of Section 5 in light of the "basic purposes of the statute"—to prevent covered jurisdictions from putting changes into effect until after "specialized review." *McDaniel*, 452 U.S. at 147-149, 151.

If the district court had done what appellants asked—enter the redistricting plans drawn by the Texas Legislature as interim remedial plans—that order would have been clearly reversible error under *Lopez* and

McDaniel. The district court thus plainly did not abuse its discretion by declining to do so.

B. Deference To Texas's Unprecleared Plans Is Unwarranted Until Texas Carries Its Burden Under Section 5, At Least In Part

For the proposition that the district court was *required* to base its interim plans on Texas's unprecleared plans, appellants rely (Br. 34-40) almost entirely on *Upham* v. *Seamon*, 456 U.S. 37 (1982) (per curiam). *Upham* has no application here.

1. *Upham* involved Texas's 1981 reapportionment of congressional districts. Texas submitted its enacted plan to the Attorney General for administrative preclearance, and the Attorney General interposed an objection. 456 U.S. at 38; see App., *infra*, 4a-7a. The objection was based solely on the configuration of two contiguous districts in south Texas; the Attorney General specifically concluded that the State had otherwise "satisfied its burden of demonstrating that the submitted plan is nondiscriminatory in purpose and effect." 456 U.S. at 38 (quoting App., *infra*, 5a)).

The plan remained unenforceable based on the Attorney General's objection. A local district court adopted an interim plan, based on the State's enacted plan in all but two respects: the court remedied the Attorney General's concerns about the south Texas districts, and it also redrew districts in Dallas County to which the Attorney General had raised no objection. 456 U.S. at 38.

This Court reversed. It explained that courts drawing districts must "defer[] to state apportionment policy" to the extent consistent with the Constitution and federal statutes. 456 U.S. at 41-43. In the context of preclearance, the Court held, "[w]e have never said that

the entry of an objection by the Attorney General to any part of a state plan grants a district court the authority to disregard aspects of the legislative plan not objected to by the Attorney General." *Id.* at 43. The Court concluded that, "in the absence of any objection to the Dallas County districts by the Attorney General," or any other finding of a "constitutional or statutory violation with respect to those districts," the district court should not have "disregard[ed] the political program of the Texas State Legislature." *Ibid.*

The Attorney General's conclusion that Texas had satisfied its Section 5 burden in substantial part was central to this Court's decision. The Court confirmed that the district court properly refused to defer to the portions of the State's plan to which the Attorney General objected. See 456 U.S. at 40-41, 43, 44. But because the Attorney General concluded that Texas had satisfied its burden with regard to Dallas County, there was nothing to remedy, and the scope of the district court's remedial discretion was irrelevant. *Id.* at 43.

2. Here, by contrast, Texas has not been found to carry its burden under Section 5, even in part. Because Texas elected to forgo administrative preclearance, the Attorney General has not been given the opportunity to object (whether to certain districts, as in *Upham*, or more broadly). And the D.C. district court has not held in Texas's favor on either prong of Section 5. To the contrary, the D.C. district court has unanimously *denied* Texas's motion for summary judgment and found sufficient evidence of invidious purpose and retrogressive effect to warrant a trial. See p. 6, *supra*.

The evidence of invidious purpose (see p. 6, *supra*) is particularly significant. The State acted in ways consistent with a focus on race, and the outcome of that race-

focused process was a significantly discriminatory effect on minority voters—not just in particular districts, but as a whole. Compare *Upham*, 456 U.S. at 40 (requiring deference only as to particular districts as to which there was no "constitutional or statutory violation"). For instance, while minorities accounted for most of Texas's population growth, *none* of Texas's new congressional seats was drawn in a way that could augment minorities' voting power. The D.C. district court agreed that the government's evidence to that effect could "provide significant circumstantial evidence" of discriminatory purpose. *Texas*, 2011 WL 6440006, at *21.

3. The district court's map is an interim plan, and the district court remains able to modify it as circumstances warrant. In considering such modifications, the court could defer under *Upham* to the extent the D.C. district court makes the requisite findings—*e.g.*, that Texas's plans are not infected by discriminatory purpose, and that at least in part, they are not retrogressive in effect.

C. Allowing State Plans To Take Effect Without Preclearance Would Create An Incentive To Stall Section 5 Proceedings

Allowing the State to demand deference *before* it carries its Section 5 burden would fundamentally distort the incentive structure of Section 5. Permitting the interim use of an unprecleared change "would place the burdens of inertia and litigation delay on those whom the statute was intended to protect, despite their obvious diligence in seeking an adjudication of their rights prior to the election." *Lucas* v. *Townsend*, 486 U.S. 1301, 1305 (1988) (Kennedy, J., in chambers). If changes could be ordered into effect without preclearance, cov-

ered jurisdictions would lose much of their incentive to cooperate with the preclearance process and bring it to prompt resolution.

Appellants get this point precisely backwards. They argue (Br. 47-48) that Texas should be able to implement its map while preclearance is pending, to discourage intervenors from slowing down the preclearance process. But intervenors will not inexorably prefer a court-imposed interim plan—they may instead favor an expeditious outcome in the preclearance process in different circumstances. In any event, the preclearance process already provides for sufficient expedition, and in this case, any conflict between the D.C. district court's schedule and the Texas filing deadline is attributable in certain measure to Texas's own choices.

1. The preclearance process includes built-in means of expedition

Covered jurisdictions have the "expeditious" option of administrative preclearance. *Morris* v. *Gressette*, 432 U.S. 491, 504 (1977); see *Branch*, 538 U.S. at 283 (Kennedy, J., concurring). The Attorney General's review is limited to 60 days, with only a single extension permitted when more information is needed. *Branch*, 538 U.S. at 263-264. Covered jurisdictions also may request expedited consideration, 28 C.F.R. 51.34, and nonparties cannot extend the deadlines. This year alone, the Attorney General has precleared 20 statewide redistricting plans; in only one case did he require more than the initial 60-day period. See App., *infra*, 1a-3a.

Second, even if covered jurisdictions opt for judicial preclearance, they can seek administrative preclearance simultaneously. See App., *infra*, 1a-3a (States sought both forms of preclearance for 14 statewide redistricting

plans this year, and all were administratively precleared). Indeed, Texas appended to its preclearance complaint materials consistent with a Section 5 submission. But because Texas did not actually submit the plans administratively, the Attorney General could not grant administrative preclearance. See *McCain* v. *Lybrand*, 465 U.S. 236, 249 (1984); 28 C.F.R. 51.26(d).

Third, even in judicial-only preclearance proceedings, and even if multiple parties intervene, the D.C. district court has ample authority to ensure that the case proceeds and the necessary fact development takes place with appropriate dispatch. See, *e.g.*, Fed. R. Civ. P. 16(b)(3), 26(a)(1)(C), (a)(2)(D), (b)(2), (d) and (f).

2. Appellants are not free from responsibility for the timing of the proceedings in the D.C. district court

a. The facts of this case illustrate why appellants are incorrect in contending that delays in obtaining preclearance justify *excusing* the need for preclearance, at least temporarily. Appellants contend that using a court-drawn map for state Senate elections is an "absurdity" (Br. 46-47), largely because the Attorney General (unlike appellees) does not object to the State's map, *e.g.*, J.A. 553 n.1. But Texas never submitted the Senate plan for administrative preclearance—which would have ensured preclearance if the Attorney General did not object.

Texas insisted on seeking preclearance *only* in the D.C. district court. If Texas wanted to preserve its option to seek judicial preclearance, it could have pursued both preclearance avenues simultaneously, as numerous other States have done this year alone; the judicial-preclearance action becomes moot when the Attorney General does not interpose an objection and the plan is

precleared. See App., *infra*, 1a-3a. But by seeking *only* judicial preclearance, Texas assumed the risk that the time necessary to obtain a judgment would exceed the time remaining before the scheduled filing deadlines.

b. Texas's own choices have contributed to the tight gap between the preclearance action and the deadlines for candidates to file. The State received the necessary census data in February 2011, but did not pass the first of the three plans until May 2011 (and the last until June 2011). The Governor then waited six weeks to sign the House plan into law and a month to sign the Senate plan. The State did not begin seeking preclearance for another month, after the Governor signed the congressional plan. By that point it was mid-July, only a few months ahead of the filing deadline.

As Judge Smith noted, J.A. 130, 184, Texas holds "extremely early" primaries—the earliest 2012 primaries in the Nation, as originally set. See Roll Call, *Primary Calendar for 2012 House and Senate Races*, http://innovation.cq.com/pub/table/index.php?id=87 (last visited Dec. 23, 2011) (*Calendar*). Filing was to begin in mid-November 2011, nearly a year before the general election. J.A. 99 n.6. Hoping to avoid the need to implement an interim plan, the district court first extended the filing deadline, J.A. 211, and has now postponed the primary and primary runoff elections as well, J.A. 82-87. But even as postponed, Texas's runoff elections will occur on June 5, 2012, J.A. 87; more than half of the States—and 11 of the 15 other covered States—hold their primaries *after* that date. See *Calendar*, *supra*.

Moreover, once Texas filed its judicial-preclearance action, it backed away from its initial proposal to hold a trial in October. See p. 5, *supra*. Instead, it sought summary judgment on all four plans. The government

answered and, *inter alia*, took the position that the House plan had (and the congressional plan appeared to have) a prohibited purpose, J.A. 613, 620, an issue very difficult to resolve on summary judgment, as this Court has explained. See *Hunt* v. *Cromartie*, 526 U.S. 541, 552-553 (1999).[4] The court then inquired whether Texas might therefore consider withdrawing its summary-judgment motion and proceeding directly to trial. J.A. 922-923. Texas declined, and predictably, the court denied summary judgment, in part because "Texas ha[d] failed to demonstrate that the Plans do not have the purpose of 'denying or abridging the right to vote on [prohibited grounds].'" *Texas*, 2011 WL 6440006, at *21; see J.A. 549-551.

3. Any concern that the interim plan would become the benchmark in the preclearance proceedings is unfounded

Appellants suggest (Br. 47-48) that litigants will stall preclearance in the hopes that a local district court will impose an interim plan and then make that plan the new benchmark in the preclearance proceeding. That concern is unfounded.

Retrogression, for purposes of Section 5, measures a voting change against the "benchmark" practice currently in force or effect, generally the last practice precleared under Section 5 or a practice imposed by a court's remedial order. *City of Lockhart* v. *United States*, 460 U.S. 125, 132-133 (1983); 28 C.F.R. 51.54(c). This Court has yet to consider whether or when an *in-*

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[4] Out of the 24 statewide plans the government has addressed in administrative or judicial proceedings since the 2010 census, the government has raised a challenge only to the Texas House and congressional plans. App., *infra*, 1a-3a.

terim districting plan ordered by a federal court while preclearance is pending may become the benchmark for Section 5 purposes. On the facts of this case, it would not.

The D.C. district court has set the preclearance case for trial on the assumption that the baselines are the plans Texas used in the last election cycle. *Texas*, Docket entry No. 114, at 5 (Dec. 12, 2011). And the local district court's plan, in any event, is no longer in effect in light of this Court's stay. At this point, on the eve of trial, the D.C. district court is fully justified in closing the record and providing that the baseline has been set.

Nor would a court-ordered, interim plan generally become the baseline against which *future* legislative plans would be judged under Section 5, at least insofar as the plan in fact remains an "interim" plan rather than one intended to remain in force indefinitely. In this case, the district court expressly noted that its plans were "interim" plans designed to last only until the State's plans come out of the preclearance process, or to govern the 2012 elections if those plans are not precleared in time. J.A. 99, 123, 157. Courts have sufficient discretion when fashioning an equitable remedy to ensure that their issuance of an interim plan brings about no essential unfairness with respect to pending or future preclearance proceedings. See, *e.g.*, *Johnson* v. *Miller*, 929 F. Supp. 1529, 1562 (S.D. Ga. 1996) (ordering interim districting plan and stating that "plan cannot be used as a benchmark against which to measure any future plan for nonretrogression"); accord *White* v. *City of Belzoni*, 854 F.2d 75, 76 (5th Cir. 1988). Accordingly, fears about the benchmark afford no justification for disregarding Section 5 and ordering the State's unprecleared plan into effect.

D. Appellants Cannot Justify Adopting The Unprecleared Plans As "Emergency" Measures

Appellants contend that a regulation implementing the VRA authorizes the interim use of its plan without preclearance. The pertinent regulation states:

> *In emergencies.* A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of that practice not explicitly authorized by the court.

28 C.F.R. 51.18(d). That regulation is of no help to appellants, for two reasons.

First, the regulation does not itself exempt *anything* from Section 5 review; it states only that, when a court purports to do so, that authorization will be read as narrowly as possible. And the regulation is not addressed to redistricting plans in particular; rather, it applies to a court-ordered "emergency interim use" of voting changes generally. Here, the regulation does not come into play because appellants did not succeed in asking the court below to exempt their map from preclearance; and nothing in the regulation suggests that a district court is ever *required* to enter the type of order about which appellants speculate.[5]

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[5] The sole case appellants cite, *Johnson* v. *Mortham*, 926 F. Supp. 1460 (N.D. Fla. 1996), does not advance appellants' position. In that case, the district court, having found one Florida congressional district unconstitutional, directed the Florida Legislature to revise the district boundaries by a date certain. The court said that it would review the plan for compliance with Section 5 and, if satisfied, order the plan into effect without preclearance. *Id.* at 1494. The court never did so, however: after the legislature enacted a new plan, the Attorney General precleared it, and then the district court, properly, found the con-

Second, the regulation by its terms applies to "emergencies." But the conflict between the preclearance proceeding and the Texas filing deadline was entirely foreseeable, and in fact foreseen. The district court prepared for it by soliciting the input of interested parties and nonparties. The availability of an alternative (indeed, numerous alternatives) *not* drawn by the State, and thus not requiring preclearance, forecloses appellants' "emergency" argument. Cf. *Clark*, 500 U.S. at 654-655 (declining to decide whether a court could ever permissibly "allow an election for an unprecleared seat to go forward," but observing that an "extreme circumstance might be present if a seat's unprecleared status is not drawn to the attention of the State until the eve of the election and there are equitable principles that justify allowing the election to proceed").[6]

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stitutional violation remedied. *Johnson* v. *Mortham*, No. 4:94-CV-40-025, 1996 WL 297280, at *1 (N.D. Fla. May 31, 1996).

[6] Appellants also err in relying on 2 U.S.C. 2a(c). That statute provides default rules for electing Members of Congress "[u]ntil a State is redistricted in the manner provided by the law thereof." 2 U.S.C. 2a(c). In *Branch*, a plurality read that condition to be satisfied when a federal court redistricts the State. 538 U.S. at 274-275. Contrary to appellants' suggestion (Br. 53 n.10), the *Branch* plurality did not presume that federal courts would adopt state plans wholesale—indeed, the order affirmed in *Branch* did not do so. Rather, federal courts' interim plans will be based on the "policies and preferences of the State" consistent with the Constitution and federal law, 538 U.S. at 274 (citation omitted), just as the interim plans in this case are based on plans originally adopted by the Texas Legislature and Legislative Redistricting Board, as modified by federal courts. See J.A. 101, 103-104, 139, 147-148; Task Force Br. 9, 14.

III. THE DISTRICT COURT PROPERLY EXERCISED DISCRETION IN DRAWING AN INTERIM PLAN, BUT SHOULD HAVE EXPLAINED CERTAIN CHOICES

Because the district court was not required to adopt Texas's enacted plan as the basis for its interim remedy, the court had substantial discretion in formulating its own plan. This Court has laid out several principles to guide that discretion. See, *e.g.*, *Connor* v. *Finch*, 431 U.S. at 414-415. Although, as appellants emphasize, deference to well-established state districting criteria is one such principle, that consideration must be balanced against the need to ensure that the court's plan complies with Sections 2 and 5 of the VRA. Those sections justify many of the district court's line-drawing choices to which appellants object. Certain aspects of the House and congressional plans, however, warrant a more detailed explanation and merit a remand. With respect to the Senate plan, because appellants raise no specific challenges except their overarching argument for deference to an unprecleared plan, the district court's ruling should be affirmed.

A. The District Court Did Not Adequately Explain The Addition Of New Minority Ability-To-Elect Districts

The district court's House plan restored all 50 minority ability-to-elect districts from the benchmark plan and also added three new minority ability-to-elect districts. J.A. 119, 173. The court, however, disclaimed reliance on Section 2, J.A. 107, stating that it drew the three new ability-to-elect districts based purely on the locations of population growth. But because the court added those three new districts, it could have avoided retrogression without restoring all 50 of the benchmark's ability-to-elect districts. The court should have

explained in greater detail why, in light of traditional state districting criteria and shifts in population, it restored all 50 of the ability-to-elect districts from the benchmark plan, particularly given appellants' objection (Br. 59-60) that restoring those districts resulted in a breach of Texas's race-neutral requirement to respect county lines.

With respect to the congressional plan, the district court appears to have concluded that Section 5 required at least two of Texas's four new seats to be ability-to-elect districts. J.A. 150 n.32; see J.A. 142, 146. That reasoning was inadequate. The government has contended in the judicial-preclearance action that facts unique to this redistricting cycle in Texas—in which the State actually *decreased* in absolute terms the number of minorities who live in ability-to-elect congressional districts notwithstanding the substantial (and disproportionate) growth in the minority population—warrant finding Texas's plan retrogressive even if it contains the same bare number of ability-to-elect districts as the benchmark. J.A. 578-585. The D.C. district court has held, however, that the record does not establish that the congressional plan is retrogressive in effect (though the same facts remain relevant to the purpose inquiry). *Texas*, 2011 WL 6440006, at *20-*21. And the district court here did not explain the basis for its apparent belief that Section 5 required it to draw two new ability-to-elect districts *and* to restore all the existing ability-to-elect districts.

The district court also did not justify the new districts based on the need to comply with Section 2. When appropriate findings are made, that provision may require a court-drawn plan to include a new district giving minorities the opportunity to elect candidates of their

choice. See *Abrams* v. *Johnson*, 521 U.S. 74, 90-91 (1997).

Because the district court may be able to justify its actions with more detailed findings, a remand on these issues is appropriate.

B. The District Court Did Not Lay A Sufficient Foundation For The Use Of Coalition Districts

Contrary to appellants' arguments (Br. 58-59), the district court correctly concluded that under certain circumstances, the VRA protects "coalition districts" in which two racial-minority groups together would form a numerical majority in a district. The court, however, did not lay the necessary foundation for drawing coalition districts.

The text of Section 5 makes no distinction between discrimination on the basis of one race or two. Indeed, when Congress extended Section 5 in 1975 to cover Texas (and other jurisdictions), it noted the State's history of discriminating against *both* African-Americans and Hispanics. S. Rep. No. 295, 94th Cong., 1st Sess. 25-28 (1975). Thus, there is no reason to think that Congress would have considered a coalition ability-district to be unprotected by Section 5.

On this point, appellants say nothing about Section 5 but assert (Br. 58 n.11) that this Court's cases "suggest[]" that Section 2 does not protect coalition districts. That is incorrect. This Court in *LULAC* recognized "the long history of discrimination against Latinos and Blacks in Texas," including "an all-white primary system." 548 U.S. at 439 (citation omitted). A coalition of African-American and Hispanic citizens of Texas could have challenged such practices as a group. By the same token, if a districting plan dilutes the voting strength of

non-Anglo citizens, those citizens may challenge the plan together.[7]

That is not to say, of course, that any coalition of different minority groups living in proximity is entitled under Section 2 to join forces in creating a minority-opportunity district. A coalition of minorities must demonstrate that they are "politically cohesive" and that Anglo citizens "vote[] sufficiently as a bloc" to defeat their unified choice. *Thornburg* v. *Gingles*, 478 U.S. 30, 49-51 (1986). Here, the district court made no findings establishing that the conditions for treating minorities as a single coalition have been met. Thus, insofar as the district court ordered coalition districts for the purpose of complying with Section 2 or Section 5—rather than simply drawing a district based on population growth that happens to be multiethnic—its analysis was inadequate.

IV. IF EXIGENT CIRCUMSTANCES PRECLUDE A REMAND, THE ORDERS SHOULD BE AFFIRMED

Appellants contend that the exigencies of timing demand that Texas's maps be designated the interim maps forthwith. But no such exigencies—especially exigencies that result in part from Texas's own choices—could justify giving effect to uncleared maps in contravention of Section 5. Whereas appellants have *not* shown that the district court's interim maps would violate Section 5, Section 2, or the Constitution, Texas's House and congressional maps violate Section 5 in both purpose and effect. The House and congressional maps also appear to violate Section 2; the congressional map dismantles

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[7] *Bartlett* v. *Strickland*, 129 S. Ct. 1231 (2009), reserved this question. *Id.* at 1242-1243 (plurality opinion). *Bartlett* considered whether minority voters can form a cognizable coalition with *white* voters.

former District 23 and denies Hispanic voters the opportunity they previously enjoyed, as a result of this Court's decision in *LULAC*, to elect a candidate in that district.

Appellants seek (Br. 54-55) to put this Court to a binary choice: the State's maps, or the district court's. If the choice is between an unprecleared map that actually violates the VRA, and a map drawn by federal judges that may (pending further explanation) be insufficiently sensitive to state redistricting principles, the choice is clear: Section 5 exists precisely to ensure that discriminatory, retrogressive voting changes—like the Texas House and congressional plans—are caught before they ever go into effect.

CONCLUSION

In No. 11-714, the order of the district court should be affirmed. In Nos. 11-713 and 11-715, the orders of the district court should be vacated and the cases should be remanded for further proceedings. In the alternative, the orders should be affirmed.

Respectfully submitted.

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DECEMBER 2011

APPENDIX A

Status of requests for preclearance of statewide redistricting plans, 2011

1. Administrative preclearance

(* indicates jurisdiction contemporaneously filed declaratory-judgment action)

State	Body	Administrative review		
		Submitted	Completed	Outcome
Alabama	Congressional*	09/21/11	11/21/11	No objection
	Board of education*	09/21/11	11/21/11	No objection
Alaska	Senate	08/09/11	10/11/11	No objection
	House of Representatives	08/09/11	10/11/11	No objection
California	Congressional	11/16/11	Under review	Pending
	Senate	11/16/11	Under review	Pending
	Assembly	11/16/11	Under review	Pending
	Board of Equalization	11/16/11	Under review	Pending

Georgia	Congressional*	10/24/11	12/23/11	No objection
	Senate*	10/24/11	12/23/11	No objection
	House of Representatives*	10/24/11	12/23/11	No objection
Louisiana	Congressional	06/02/11	08/01/11	No objection
	Senate	04/28/11	06/28/11	No objection
	House of Representatives*	04/21/11	06/20/11	No objection
	School board	06/07/11	08/08/11	No objection
	Public Service Commission	05/31/11	08/01/11	No objection
North Carolina	Congressional*	09/02/11	11/01/11	No objection
	Senate*	09/02/11	11/01/11	No objection
	House of Representatives*	09/02/11	110/01/11	No objection
South Carolina	Congressional*	08/31/11	10/28/11	No objection
	Senate*	07/27/11	11/14/11	No objection
	House of Representatives*	08/09/11	10/11/11	No objection

South Dakota	Senate	11/22/11	Under review	Pending
	House	11/22/11	Under review	Pending
Virginia	Senate*	05/11/11	06/17/11	No objection
	House of Delegates*	05/11/11	06/17/11	No objection

2. Declaratory-judgment actions

(without submission for administrative preclearance)

State	Body	Declaratory-judgment action		
		Filed	Decision	Outcome
Michigan	Congressional	11/03/11		Pending
	Senate	11/03/11		Pending
	House of Representatives	11/03/11		Pending
Texas	Congressional	07/19/11		Pending
	Senate	07/19/11		Pending
	House of Representatives	07/19/11		Pending
	Board of Education	07/19/11	09/22/11	Granted

APPENDIX B

[Seal Omitted]

U.S. Department of Justice
Civil Rights Division

Washington, D.C. 20530

Office of the Assistant Attorney General

WBR:GWJ:CWJ:PFH:ELG:bhq
DJ 166-012-3
E0840

[29 JAN 1982]

Honorable David Dean
Secretary of State
Elections Division
P.O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to Senate Bill No. 1 (1981) which provides for the Congressional Districts for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on December 7, 1981.

We have given careful consideration to the information provided by you, data available from the Bureau of the Census, and comments and information from interested third parties. We have also considered information relating to the issues raised in *Seamon* v. *Upham*, Civil Action No. P-81-49-CA (E.D. Tex.), a lawsuit involving the Congressional reapportionment.

As you are aware, under Section 5 the submitting authority has the burden of proving that a submitted plan does not have a discriminatory purpose or effect. See, *e.g.*, *Georgia* v. *United States*, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). Our analysis has revealed that, for the most part, the state has satisfied its burden of demonstrating that the submitted plan is nondiscriminatory in purpose and effect. Concerns remain, however, over the manner in which the congressional district lines were drawn in a portion of south Texas. For that reason I must, on behalf of the Attorney General, interpose a Section 5 objection to the plan because of the manner in which it affects the districts described below.

The area of concern is the area comprising proposed Districts 15 and 27. This portion of South Texas experienced substantial growth during the past decade and the 1980 Census reveals that 67 percent of the persons residing in this area are Mexican Americans. Under the plan as drawn, however, this very significant Mexican-American concentration and growth area seems to be proportioned inequitably between these two districts so that while proposed District 15 is 80.4 percent Mexican American, proposed District 27 is only 52.9 percent Mexican American. We have received allegations that this method of dividing the area dilutes the voting strength of the Mexican-American community as it exists in this area; we are also aware that numerous alternate plans were presented which would not have this effect and that such alternatives were rejected. We are particularly troubled by information indicating that the future population growth in this area (a heavy majority of which likely will continue to be Mexican-American) is projected primarily in Hiladgo and Cameron counties. Thus the inclusion of

both of these counties into District 15 may exacerbate the alleged "packing" of Mexican Americans into this district and effectively preclude Mexican-Americans from realizing their potential voting strength in District 27.

For these reasons, therefore, I am persuaded that Section 5 requires an objection. However, we will reconsider the objection if the state can present information demonstrating that our concerns are not well-founded. Likewise, we are available to give prompt attention to the matter if the State alters the plan to remedy the concerns described.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the described changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the implementation of the provisions of Senate Bill No. 1 (1981) legally unenforceable, because of the manner in which the Bill affects Districts 15 and 27.

If you have any questions concerning this letter, please call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

/s/ WM. BRADFORD REYNOLDS
WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division

AMICUS CURIAE BRIEF

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

RICK PERRY, in his official capacity as Governor of Texas, ET AL., APPELLANTS,

v.

SHANNON PEREZ, ET AL., APPELLEES

RICK PERRY, in his official capacity as Governor of Texas, ET AL., APPELLANTS

v.

WENDY DAVIS, ET AL., APPELLEES

RICK PERRY, in his official capacity as Governor of Texas, ET AL., APPELLANTS

v.

SHANNON PEREZ, ET AL., APPELLEES

On appeal from the United States District Court for the Western District of Texas

BRIEF OF ALABAMA, VIRGINIA, FLORIDA, SOUTH CAROLINA, ARIZONA, GEORGIA, MICHIGAN, AND LOUISIANA AS AMICI CURIAE IN SUPPORT OF APPELLANTS

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QUESTION PRESENTED

While a jurisdiction covered by Section 5 of the Voting Rights Act seeks preclearance of its own redistricting plans, may a three-judge district court order the use of interim electoral maps that give no deference to the covered jurisdiction's maps and are not premised on any actual or likely violation of federal law?

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INTRODUCTION AND INTEREST OF AMICI CURIAE

The amici curiae are States subject in whole or in part to the preclearance requirement of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and they bear the significant burdens imposed by that requirement. Some of the amici have argued elsewhere that Section 5 is unconstitutional, but the amici take no position on that question in this case. Instead, the amici merely request that the Court apply Section 5 in a way that, in Justice Breyer's words, "use[s] a little common sense." Transcript of Oral Arg. at 36:12-15, *Riley v. Kennedy*, 553 U.S. 406 (2008) (No. 07-77).

Redistricting litigation affects all States and localities, but its impact falls disproportionately on the covered jurisdictions. All States and localities must redistrict after the decennial census. But the covered jurisdictions bear the added burden of securing their plans' preclearance from Washington D.C. When that preclearance is not forthcoming and an election is looming, a local court may be called upon by private litigants to enforce an interim Section 5 remedy. This Court has held that the remedial court's Section 5 remedy should defer to the State's own apportionment plan. The interim remedy imposed in this case is not consistent with this Court's guidance.

Although there are two pending lawsuits in two different courts, neither court has found that any of Texas's new districts are likely to violate federal law. The lower court did not find that the composition of any district is likely to violate any provision of the

Voting Rights Act, and the District Court for the District of Columbia has not denied preclearance. There is, in short, every indication and presumption that Texas's new legislative districts are "entirely harmonious with federal law." *Riley v. Kennedy*, 553 U.S. 406, 427 (2008).

The lower court's decision to throw out the Legislature's plan thus considerably raises the federalism stakes of Section 5 and threatens to push Section 5 toward the outer limits of congressional authority. It is one thing to hold, as in the usual Section 5 case, "that a state law may not be enforced if it conflicts with federal law." *Id.* at 427. But it is a federalism problem of a different order of magnitude to impose an electoral map generated at the whim of a federal court without any finding that there has been, or is likely to be, a violation of federal law.

Contrary to the decision below, the amici believe Section 5 should be given an application that both works and minimizes the constitutional concerns that this Court has often recognized. The lower court should have strongly deferred to the Texas Legislature's own redistricting plan in crafting an interim Section 5 remedy.

SUMMARY OF ARGUMENT

On the facts of this case, the common sense solution is to defer to the State's plan except to the extent it needs to be modified for likely violations of federal law. That rule makes practical sense in light of the federal courts' well-established reluctance to draw apportionment plans from scratch and the timing and burdens of the preclearance process. As

evidenced by this case and recent examples from Alabama, securing preclearance for a state-wide change is time and resource intensive. If the lower court's decision stands, adverse parties will have new incentives to drag out the preclearance process, leading to more Section 5 gamesmanship and litigation. These and other pragmatic concerns justify giving deference to the State's plan while it is pending preclearance.

The doctrine of constitutional avoidance provides an additional reason for the Court to take a deferential and pragmatic approach. The federalism costs of the lower court's decision are greater here than in the typical Section 5 remedial dispute. In this case, unlike in other Section 5 cases, the lower court held that Section 5 required it to create a completely *new* state voting practice, not merely compel the State to use a pre-existing one. The lower court's new practice is in an area of uniquely local concern, and the Constitution expressly places the responsibility for congressional apportionment on state legislatures. Finally, because the lower court did not find any likely violations of federal law, the effect of the lower court's decision is to elevate the unsubstantiated allegations of private litigants over the plans adopted by a majority of the Texas Legislature. An interim remedy that defers to the State's own apportionment plan will at least mitigate, in this case, the constitutional concerns that this Court has recognized.

ARGUMENT

I. It makes pragmatic sense for the court to defer to the legislature's redistricting plan under these circumstances.

Common sense says that when a covered Section 5 jurisdiction has pursued preclearance of a redistricting plan, but no final preclearance decision has yet occurred, the interim remedy should defer to the jurisdiction's own redistricting plan except to the extent necessary to remedy any *likely* violations of federal law. That is by far the soundest and the easiest resolution to these kinds of disputes. The alternative – for the federal court to make up a plan of its own – is not a good one.

A. Courts are not good at legislative apportionment, but are well-suited to modify existing plans for violations of federal law.

This Court's decisions consistently favor redistricting plans that come from state legislatures over plans that come from the judiciary because "reapportionment is primarily a matter for legislative consideration and determination." *White v. Weiser*, 412 U.S. 783, 794 (1973) (citations and internal quotation marks omitted). Even in the context of Voting Rights Act remedies, the Court has held that lower courts should use legislative plans as the starting point, changing them only to remedy violations of federal law. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 415-416 (2006)("a lawful, legislatively enacted plan should be

preferable to one drawn by the courts"); *Upham v. Seamon*, 456 U.S. 37, 40-41 (1982) ("a court must defer to the legislative judgments the plans reflect, even under circumstances in which a court order is required to effect an interim legislative apportionment plan").

The reason for this Court's preference for legislative plans is simple: Courts may be competent to alter district lines to account for violations of federal law, but they are ill-suited to draw such lines from scratch. The process of legislative apportionment requires drawing sometimes arbitrary, "inconsistent, illogical, and ad hoc" lines between groups of voters. *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004). *Accord id.* at 306-307 (Kennedy, J., concurring in the judgment) (noting "lack of comprehensive and neutral principles for drawing electoral boundaries"). Line-drawers must give subjective weight to considerations like incumbency, population traits, and history. Courts that take on that task "risk assuming political, not legal, responsibility for a process that often produces ill will and distrust." *Id.* at 307 (Kennedy, J., concurring in the judgment).

The pragmatic rationale for the presumption in favor of legislature-produced apportionment plans is borne out by the facts of this case. The timing of the redistricting decision was such that the lower court could hardly make reasoned, litigated determinations about where to draw particular lines. The lower court majority expressly recognized as much. *See* JA 99 ("[I]n cases where a court drawn interim plan is required . . .the maps will always be drawn under time intensive conditions"). And,

despite two attempts, the lower court could not give a persuasive rationale for each of the numerous decisions it made.

An even greater problem is that, in its haste to create its own plan, the lower court shirked the institutional role in which the federal courts specialize—"say[ing] what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Although courts are not well-suited to create their own redistricting plans, they are well-suited to determine whether any particular aspect of the proposed plan is likely to violate federal law. Here, the lower court drew its lines without finding any likelihood that the Legislature's plans violated the VRA. Given courts' institutional competencies it makes sense for actual federal law violations, not other considerations, to drive an interim Section 5 remedy. *See, e.g., Upham*, 456 U.S. at 43 ("whether a remedy is required must be determined on the basis of the substantive legal standards applicable to the State's submission").

B. Deference makes sense given the burdens and timing of the Section 5 preclearance process, whether administrative or judicial.

The lower court erroneously concluded that it could not impose a remedy based on the Texas Legislature's plans without "mak[ing] the preclearance process meaningless." JA 157. Whatever the technical status of Texas's pending judicial preclearance action, however, the process has not been meaningless. DOJ has had ample

opportunity to review evidence and, in fact, has identified what it believes to be the retrogressive aspects of the redistricting plans. The federal courts can evaluate those concerns and, if they are valid, can alter the Legislature's plans accordingly. This result is no different from the equivalent result in *Upham v. Seamon*, which came after a final administrative preclearance determination had already been made.

1. The lower court's ruling reflects fundamental misconceptions about the burdens, processes, and end result of preclearance. The administrative preclearance process can be quick and easy for some changes such as moving a polling place. But securing preclearance of a significant change like a state-wide redistricting takes considerable resources and time, whether that preclearance is judicial or administrative.

a. To be clear, the preclearance process imposes a massive burden on covered jurisdictions. After they identify a potential voting change, the State and its political subdivisions bear the burden of proving a negative. They must prove to DOJ or the D.C. District Court that the change does not have a retrogressive effect on minorities. 42 U.S.C. §1973c; *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 480 (1997); *see also* 28 C.F.R. §§ 51.1-51.67 (preclearance guidelines).

To file for administrative preclearance, therefore, the State must compile and submit no fewer than 16 pieces of information. 28 C.F.R. § 51.27. In a nutshell, the States must (1) detail the old and new practices and the difference between the two, (2) detail the preclearance and litigation history of the

old practices, (3) explain why the State wants to make the change, and (4) explain how the change impacts minority voters. *Id.* DOJ may also request supplemental information, *see* 28 C.F.R. § 51.37(a), ranging anywhere from transcripts and DVDs of the state's deliberative process to the name and race of every state legislator for the past 25 years. DOJ also considers outside comments and suggestions as part of its final consideration. 28 C.F.R. § 51.53. Then, DOJ may continue to request additional information or "conduct any investigation or other inquiry that is deemed appropriate in making a determination." 28 C.F.R. § 51.38(a).

b. Submission times vary. The States can generate routine preclearance submissions, such as setting a special election to fill a legislative vacancy, within hours. Other submissions, like the state-wide redistricting plans at issue in this case, may take weeks or even months to prepare.

For example, in 2007, Alabama updated and unified the law governing its county commissions, and, among other things, established a state-wide, one-year residency requirement for all candidates seeking a county commission seat. *See* Ala. Act No. 2007-488. Even though the law was innocuous, preclearance imposed a heavy burden. To generate an application for administrative preclearance, Alabama had to research and chart the legislative, preclearance, and litigation histories of the benchmark practices in all of Alabama's 67 counties, *see* 28 C.F.R. § 51.27, which required collecting information through a multi-page questionnaire distributed to each county. The last of the State's three preclearance submissions, which encompassed

the work on the residency requirement, exceeded 1,700 pages, including voluminous exhibits and a 103-page appendix summarizing information for all 67 counties. *See* DOJ File Nos. 2008-427, 2008-1576, 2008-3861, 2008-5601. DOJ ultimately allowed the Act to take full effect—but not until 18 months after it was signed into law. *See id.*

c. The administrative preclearance process can be drawn out. Even after the State generates a request for preclearance, the back-and-forth between the State and DOJ can easily take 120 days or more. DOJ has 60 days to formulate an initial response to the request, and, when DOJ requests supplemental information, it triggers a new 60-day period that runs from its *receipt* of the supplement. 28 C.F.R. § 51.37.

Again, a recent example. In 2006, Alabama updated its election procedures, and, again, the changes were largely innocuous. *See* Ala. Act No. 2006-570. On July 13, 2007, Alabama filed a 44-page preclearance submission that included 21 exhibits, a roadmap setting out the changes, and a 33-page chart detailing the preclearance history of the various state statutes and regulations that the new act affected. *See* DOJ File No. 2007-3488. On August 21, DOJ nonetheless wrote that it was rejecting Alabama's submission for failing to describe the changes with requisite clarity because it did not "include a united table or listing" of the changes. *Id.* So Alabama developed and submitted a unified 193-page chart setting out the old and new statutes, side-by-side. *Id.*

On October 29, 2007, DOJ precleared most of the act, but requested supplemental information on one

of the changes. After conducting additional investigation, Alabama gave notice in December of its intent to withdraw that part of its submission rather than respond to DOJ's burdensome request for supplemental information. DOJ acted on the notice on January 29, 2008, concluding the process roughly 200 days after Alabama's initial submission. (Coincidentally, Alabama's administrative-preclearance saga—from initial submission to final DOJ action—mirrors the same July-to-January timeframe in Texas's judicial preclearance action.)

d. At the end of the administrative preclearance process, the covered jurisdiction receives a letter stating the views of DOJ. 28 C.F.R. § 51.41. If the letter grants preclearance, then the covered jurisdiction can enforce its law without threat of a Section 5 challenge. If the letter denies preclearance, the submitting jurisdiction may ask the Attorney General to reconsider it, and the Attorney General then has another 60 days to act on that request. 28 C.F.R. § 51.48(a). After a denial, the covered jurisdiction can challenge DOJ's determination in D.C. District Court. 28 C.F.R. § 51.44(c).

2. Importantly, it is outside the State's power to move preclearance proceedings to a conclusion, whether administrative or judicial. Although DOJ is supposed to rule on an administrative preclearance request within 60 days, the process may be delayed if DOJ rejects the request as noncompliant or requests supplemental evidence. Requests for supplemental information for preclearance of state-wide changes, like the ones at issue here, may themselves require many more weeks of work by the States to prepare.

See 28 C.F.R. § 51.28 (describing common types of supplemental information requested).

The only timing that the State can control is when the State *submits* its changes for preclearance after they become final. *See* 28 C.F.R. § 51.22(a)(1) (noting that DOJ does not accept submissions "prior to final enactment"). That Texas promptly filed its judicial action for preclearance thus distinguishes this case from *Lopez v. Monterey County*, 519 U.S. 9 (1996), and similar cases. In *Lopez*, there was a determination that the covered jurisdiction had flouted federal law by failing to submit its plans for preclearance, and a federal court had to draw new plans in light of that failure. Specifically, this Court explained that the covered jurisdiction had "not discharged its obligation [under federal law] to *submit* its voting changes to either of the forums designated by Congress." *Id.* at 25 (emphasis added). *Accord id.* at 24 ("The goal of a three-judge district court facing a § 5 challenge must be to ensure that the covered jurisdiction *submits* its election plan to the appropriate federal authorities for preclearance as expeditiously as possible." (emphasis added)). Here, Texas has already done the only thing in its power to do; it has submitted its plans for preclearance.

Finally, given the vagaries of the preclearance process, any contention that preclearance proceedings would be over had Texas pursued administrative preclearance instead of judicial preclearance is speculation. *See* JA 157("Had the State chosen the path of administrative preclearance through the Department of Justice, we would perhaps be in the remedial phase right now."). In

fact, because of the burden of preparing a timely preclearance request and the early date of the Texas elections, localities in Texas that submitted their redistricting plans for *administrative* preclearance in the fall may face the same timing dilemma as the State. *See Petteway v. Henry*, No. 3:11-cv-511 (Doc. 32), 2011 WL 6148674, *2 (S.D. Tex. Dec. 9, 2011) (declining to create judicial plan while Galveston County's redistricting plan waits for administrative preclearance); Joint Response to Court Inquiries, (Doc. 36) No. 3:11-cv-511 (S.D. Tex. Dec. 21, 2011) (reporting that, on sixtieth day, DOJ requested supplemental information that may delay a final preclearance decision until March 1, 2012).

3. Practically speaking, the most important parts of the preclearance process have already happened in this case. Here, as in the administrative preclearance process, DOJ has reviewed reams of evidentiary materials, conducted witness interviews, and identified certain elements of the State's plans that it contests and many more that it does not contest. *See* United States and Defendant-Intervenors Identification of Issues (Doc. 53), No. 1:11-cv-01303 (D.D.C. Sept. 23, 2011) at 2-6 (alleging retrogression in five house districts), at 8-12 (alleging retrogression in congressional Districts 23 and 27); Answer of United States (Doc. 45), No. 1:11-cv-01303 (D.D.C. Sept. 19, 2011) at 1 (agreeing to judicial preclearance of the entire Senate plan). Given the advance of the preclearance process thus far, it does not offend that process to use the submitted plans as the starting point for the Section 5 interim remedy any more than it offended Section 5 to use the State's

plans as the starting point for the final remedy in *Upham v. Seamon*.

C. The lower court's rule will lead to anomalous and unintended consequences.

The lower court's decision provides a different rule for redistricting plans that have been submitted for preclearance and acted on and those that have been submitted for preclearance and have not been acted on. This rule is likely to lead to more litigation and gamesmanship in this case and others.

1. The lower court's decision provides additional opportunities for gamesmanship and conflict in Texas's judicial preclearance action. Because of the lower court's decision and DOJ's litigation positions, it is possible that there will never be a judicial determination of whether the Texas Legislature's current plan is retrogressive when compared to Texas's previous districts. Instead, DOJ has moved to abate the judicial preclearance action on the basis of the lower court's interim remedy. *See* United States' and Intervenors' Motion to Hold Case in Abeyance (Doc. 108), No. 1:11-cv-01303 (D.D.C. Nov. 25, 2011). DOJ has also taken the position that the lower court's new plan will become the Section 5 benchmark from which the State's present and future legislative apportionment plans will be judged for retrogression. *See Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 76 Fed. Reg. 7470, 7470 (Feb. 9, 2011) (advising that a new benchmark is set when "a Federal Court has drawn a new plan and ordered it into effect").

Without conceding that DOJ's litigation position is correct or that its Guidance is a lawful exercise of its authority, DOJ's present tactics provide a good example of the opportunities for gamesmanship if the lower court's decision stands.

But even if the proceedings in the D.C. District Court eventually reach a final preclearance determination, this litigation will not be over. The parties will continue to fight about whether that precleared plan should go into effect before the next round of elections, what is the baseline plan for the purpose of judging retrogression of future plans, and other things. There is no easy answer to those questions. But, if the lower court had minimized the differences between the interim plans and the submitted plans, these future disputes would take on much less importance. As it is, the interim remedy kicks the can down the road and guarantees additional litigation in the lower court regardless of what happens in the D.C. District Court.

Finally, the more the interim plan deviates from the plan adopted by the majority of the Texas Legislature the more likely it is that the Texas Legislature will respond with another plan in the future, spawning another round of federal litigation. This is essentially what happened the last time Texas attempted to redistrict. In 2000, the Texas Legislature failed to adopt a congressional apportionment plan, which resulted in a court-ordered apportionment plan that gave an advantage to the Democratic Party. The Republican-controlled Texas Legislature responded by adopting a new apportionment plan in 2003, thus setting off a new round of litigation that made it to this Court at least

twice. *See League of United Latin American Citizens v. Perry*, 548 U.S. 399, 412-13 (2006) (recounting this history). If the lower court here had accepted the majority of the Legislature's plan, modified only for violations of federal law, it would have at least limited the likelihood of sparking another round of apportionment, preclearance, and litigation.

2. The lower court's decision also gives Section 5 litigants the wrong incentives in the future. The lower court held that, because preclearance proceedings were still pending in the D.C. District Court, it had *carte blanche* authority to remake the districts without regard to the Texas Legislature's democratically-enacted redistricting plan. But the lower court admittedly would not have had that authority had the preclearance process been completed, regardless of whether certain districts were found to be retrogressive. *See Upham v. Seamon*, 456 U.S. 37, 40-41 (1982).

Under the lower court's rule, a covered jurisdiction will often be better off with a partial preclearance *rejection* than a pending preclearance submission. If the plan at issue here had been rejected, the lower court's obligation to defer to its unchallenged parts would not reasonably be subject to question. And, even if the plan had been rejected in part, the State would have been on surer footing when it came time to litigate private plaintiffs' Section 2 challenges.

Thus, the lower court's decision means that litigants who want to prevent a redistricting plan from taking effect do not have to win before DOJ or any federal district court. Instead, they need only delay. They can do so by intervening in judicial

preclearance actions, as they have done here, or by submitting comments to DOJ during the administrative-preclearance process. Creating additional incentives to delay the preclearance process threatens to turn Section 5 into little more than a partisan tool to defeat non-retrogressive voting changes.

II. The lower court's interim remedy exacerbates the federalism costs of Section 5.

A pragmatic application of Section 5 must account for the constitutional concerns that this Court has long recognized. Section 5's preclearance mechanism, as this Court and its individual members have repeatedly stated, is "an extraordinary departure from the traditional course of relations between the States and the Federal Government." *Presley v. Etowah County Comm'n*, 502 U.S. 491, 500-01 (1992); *accord, e.g., Miller v. Johnson*, 515 U.S. 900, 926 (1995); *Dougherty County Bd. of Educ. v. White*, 439 U.S. 32, 48 (1978) (Powell, J., dissenting) (collecting citations). Just two terms ago, this Court questioned "[w]hether conditions continue to justify" this "extraordinary legislation otherwise unfamiliar to our federal system." *NW. Austin Mun. Utility Dist. No. One v. Holder*, 557 U.S. 193, 129 S.Ct. 2504, 2516 (2009) ("*NAMUDNO*"). The doctrine of constitutional avoidance thus provides a powerful reason to adopt the common-sense solution and defer to the State Legislature's redistricting plan.

To be clear, the constitutional questions about Section 5 are greater in this case than the run-of-the-mill Section 5 remedial dispute. In at least three respects, the lower court's interim Section 5 remedy threatens to "exacerbate the 'substantial' federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about §5's . . . constitutionality." *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 336 (2000) (quoting *Lopez*, 525 U.S. at 282).

A. The Legislature's plans are the only politically-accountable benchmarks.

There is a powerful difference between (1) in the typical Section 5 scenario, forcing a State to keep a practice it adopted but now wants to change; and (2) here, forcing a State to adopt an entirely new practice that it never chose in the first place.

In the usual case, a Section 5 interim remedy requires a covered jurisdiction that has enacted a new law to stay enforcement of the new law, and to continue operating under the old law until there is a determination on preclearance. *See N.A.A.C.P. v. Hampton County Election Comm'n*, 470 U.S. 166, 182-833 (1985); *Berry v. Doles*, 438 U.S. 190, 192-93 (1978). Although that result certainly infringes on State prerogatives, the federal court is not really *choosing* the practice for the State. The State at one point had the right to choose for itself and chose to be governed by the benchmark practice at that time.

The Section 5 remedial inquiry is different here. Because of one-person one-vote, there are no legislative districts to which Texas can revert

pending preclearance of its new districts. As the lower court recognized, the choice in this case is not between a politically-accountable benchmark practice and a new politically-accountable practice. Instead, since there is no viable benchmark, the question is *who* comes up with the interim practice: the state legislature or a federal court? The lower court chose option 2—the creation of a new plan that has never been adopted by *any* democratically-accountable state actor.

Setting to one side whether district line-drawing is the proper task for a federal *judge*, *see Vieth* 541 U.S. at 278, the district court's decision raises the federalism stakes considerably. It effectively allows the federal government to dictate the substance of state law *in the first instance* and comes perilously close -- if it does not go all the way -- to authorizing precisely the sort of "commandeering" of state governmental processes that the Constitution condemns. *See Printz v. United States*, 521 U.S. 898, 925 (1997); *New York v. United States*, 505 U.S. 144, 161 (1992). There is little difference between a federal law that requires a State legislature to "enact" or "enforce" particular laws in the first instance (plainly forbidden by *New York* and *Printz*) and the lower court's interpretation of Section 5 as a law that allows a federal court to create a new state voting practice out of whole cloth.

B. Redistricting is mandated by the federal constitution and is the constitutional responsibility of state and local governments.

This Court explained in *NAMUDNO* that the reenacted Section 5 continues to "differentiate[] between the States" even though "[t]he evil that § 5 is meant to address may no longer be concentrated in the jurisdictions singled out for preclearance." *NAMUDNO*, 129 S. Ct. at 2512. For example, the Court noted that "[t]he statute's coverage formula is based on data that is now more than 35 years old" and "the racial gap in voter registration and turnout is [now] lower in the States originally covered by § 5 than it is nationwide." *Id.* It is an open question whether such evidence, even in the mine run of Section 5 cases, can override "our historic tradition that all the States enjoy equal sovereignty." *Id.* (citations and internal quotation marks omitted).

It is a special constitutional problem, however, for Section 5 to differentiate between States as they redistrict congressional and legislative seats. The constitutional concerns are exacerbated because the Constitution expressly "leaves with the States primary responsibility for apportionment" of their federal congressional districts. *Growe v. Emison*, 507 U.S. 25, 34 (1993); *see also Chapman v. Meier*, 420 U.S. 1, 27 (1975) ("[R]eapportionment is primarily the duty and responsibility of the State through its legislature or other body"). Likewise, the Equal Protection Clause affirmatively requires that "a State make an honest and good faith effort to construct districts, in both houses of its legislature,

as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). The delegation of these tasks to state legislatures is not happenstance; the task of legislative apportionment is a uniquely local responsibility. It is at the very heart of sovereignty for a local population to determine *who* can stand for election to represent them. *See Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991); *see also Alden v. Maine*, 527 U.S. 706, 751 (1999).

In light these federal constitutional obligations, the trial court's decision that it need not defer to the Texas legislature's plans poses heightened constitutional problems. The Texas Legislature did not decide, of its own initiative, to reapportion its congressional and state legislative districts in light of population growth. Instead, the redistricting plans are the Texas Legislature's good faith effort to fulfill its obligations under Article I, Section Four and the Equal Protection Clause of the federal constitution. *Compare Balderas v. Texas*, No. 6:01-cv-158 (Doc. 413) (E.D. Tex., Nov. 14, 2001) (per curiam), *summarily aff'd*, 536 U.S. 919 (2002) (addressing failure to legislature to enact any congressional redistricting plan). And, although the Constitution imposes on *all State legislatures* an obligation to redistrict, only the covered jurisdictions can find themselves in this predicament. Only they can be told that their legislatively enacted plans can be disregarded because they have not, yet, been precleared. A rule that requires deference to the apportionment plans of all State legislatures, including Section 5 States, will not eliminate the constitutional obstacles to Section 5 that this Court

recognized in *NAMUDNO*, but it will at least mitigate them.

C. The lower court allowed private litigants to write the redistricting plan.

Finally, the lower court's line-drawing is particularly problematic because it elevated the unsubstantiated complaints of private parties over the will of the Texas Legislature. Federal law trumps state law; there is no doubt. But a private party's unproven *allegations* of violations of federal law cannot form the basis for a redistricting plan that varies from the plan enacted by the State's legislative body. This Court has "never said that the entry of an objection by the Attorney General to any part of a state plan grants a district court the authority to disregard aspects of the legislative plan not objected to by the Attorney General." *Upham*, 456 U.S. at 43.

This problem is particularly acute in the lower court's changes to the Senate plan. There is no contention by DOJ that any part of the Senate plan is retrogressive in either purpose or effect under Section 5. The *only* reason the lower court could have given for changing the plan was to account for private parties' allegations of violations of other federal laws.

To craft an apportionment plan that accounts for the complaints of private parties without any determination that they are valid gives private litigants more control over redistricting than the

majority of the State. "If the principle of representative government" has any meaning, it requires that "the balance between competing interests must be reached after deliberation by the political process established by the citizens of the State, not by judicial decree mandated by the Federal Government and invoked by the private citizen." *Alden v. Maine*, 527 U.S. 706, 751 (1999). Prudence cautions against any interpretation of Section 5 that puts it at odds with the constitutional guarantee of "a republican form of government." *Riley v. Kennedy*, No. 07-77, Oral Arg. Trans. at 48:17-18 (question of Justice Scalia).

Although private litigants have alleged that the Texas Legislature's plans violate federal law, Texas has complied with Section 5's preclearance procedure. *Compare Lopez*, 519 U.S. at 25 (noting that the jurisdiction had "not discharged its obligation [under federal law] to submit its voting changes to either of the forums designated by Congress."). Without a finding of some substantive violation of federal law, the lower court was wrong to disregard the will of a majority of the Texas Legislature. And the lower court's conclusion that Section 5 itself warrants this result is an insupportable exercise of federal power.

CONCLUSION

The Court should reverse the lower court.

Respectfully submitted,

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December 28, 2011

AMICUS CURIAE BRIEF

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

RICK PERRY, GOVERNOR OF TEXAS, ET AL., *Appellants*

v.

SHANNON PEREZ, ET AL., *Appellees.*

RICK PERRY, GOVERNOR OF TEXAS, ET AL., *Appellants*

v.

WENDY DAVIS, ET AL., *Appellees.*

RICK PERRY, GOVERNOR OF TEXAS, ET AL., *Appellants*

v.

SHANNON PEREZ, ET AL., *Appellees.*

On Appeal from the United States District Court for the Western District of Texas

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BRIEF OF CONGRESSMAN CANSECO AS *AMICUS CURIAE* SUPPORTING APPELLANTS

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INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, the Honorable Francisco "Quico" Canseco respectfully submits this brief *amicus curiae* in support of Appellants (the "State").[1] Congressman Canseco represents Texas' 23rd congressional district ("District 23"), one of only two congressional districts identified by the U.S. Department of Justice ("DOJ") as objectionable. JA 616-620. He is also the co-sponsor of Plan C216,[2] the interim congressional plan submitted to the lower court that Fifth Circuit Judge Jerry Smith endorsed for the 2012 elections. Based on the above, *amicus* has a direct and vital interest in the issues presented to this Court.

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[1] Pursuant to Supreme Court Rule 37.3(a), the parties have consented to the filing of this brief and the consent letters are on file with the Clerk of this Court. Pursuant to Supreme Court Rule 37.6, Congressman Canseco affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party, other than *amicus curiae* and its counsel have made a monetary contribution to the preparation or submission of this brief.

[2] See Appendix. Detailed reports and an interactive map are available at http://gis1.tlc.state.tx.us by selecting "Exhibits for *Perez* et. al" and then "Plan C216 Canseco-Cuellar Bipartisan Interim Proposal."

SUMMARY OF THE ARGUMENT

Amicus seeks to assist the Court in three unique respects:[3]

First, Congressman Canseco represents District 23, and he is well-equipped to detail how the district court majority made drastic changes to that district without any justifiable legal basis. This analysis is vital given the prominent role District 23 has played in these proceedings and because neither party addresses, in detail, the effect of the district court's interim plan for the 2012 congressional elections (the "Interim Congressional Plan") on any particular district.

Second, Congressman Canseco is the co-sponsor of Plan C216, the interim congressional plan endorsed by Judge Smith. JA 151-152. If the Court vacates the Interim Congressional Plan and does not remand with instructions to impose the State's Plan *in toto*, then the boundaries proposed in Plan C216 could be highly instructive when fashioning an appropriate remedy under severe time constraints.

Finally, Congressman Canseco uses this brief to discuss deficiencies of the Interim Congressional Plan that the State did not address or brief fully in its Opening Brief.

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[3] This brief is limited in scope to the interim redistricting plan for congressional elections; however, it inevitably raises issues and makes arguments that are also applicable to the Court's consideration of the interim legislative plans.

ARGUMENT

The district court clearly erred by refusing to grant *any* deference to Texas' legislatively enacted congressional map. Without making any finding of an actual or likely violation of law, the court simply redrew Texas' election maps based on its own notions of "neutral principles," the "collective public good," and "fairness and impartiality." JA 170–71. By so doing, the district court "broadly brush[es] aside state apportionment policy without solid constitutional or equitable grounds for doing so." *Whitcomb v. Chavis*, 403 U. S. 124, 160-161 (1971).

I. In Drawing District 23, The District Court Modified The District Without Legal Justification

A. The State's Plan Took A Court-Drawn Latino Opportunity District And Made It More Latino

Since 1991, District 23 has run along the majority of Texas' border with Mexico and has been one of the largest congressional districts, by physical size, in the United States. Despite its size, District 23 has not had an urban center, abutting the city of El Paso (historically included within District 16) in the west and the city of San Antonio (Districts 20, 21, and 28) in the east.

Notably, the current boundaries of District 23 are of recent vintage, the direct result of a court-ordered redrawing following this Court's decision in *LULAC v. Perry* five years ago. *LULAC v.* Perry, 548 U.S. 399 (2006). That case arose in part from the Texas Legislature's efforts to protect Republican

Henry Bonilla's incumbency by changing the boundaries—and hence the population mix—of District 23 in a mid-decade redistricting. In that newly drawn district, the Latino share of the citizen voting-age population ("HCVAP") had been reduced dramatically from 57.5% to 46%.

The League of United Latin American Citizens and others challenged that new plan, and this Court subsequently invalidated the drawing of District 23, finding that it diluted the voting power of Latinos in violation of Section 2 of the Voting Rights Act ("VRA"). Upon remand, the three-judge redistricting panel "ma[de] District 23 an effective Latino opportunity district, consistent with the Supreme Court's direction." *LULAC v. Perry*, 457 F.Supp.2d 716, 718-19 (E.D. Tex. 2006).

In the newly drawn district, which at the time had a 57.5% HCVAP, Democrat Ciro Rodriguez was able to defeat Bonilla in the 2006 special runoff election and easily win re-election in 2008 with 55.6% of the vote. In 2010, Congressman Canseco defeated Rodriguez with 49.39% of the vote during a "wave" election that resulted in Republicans picking up a net total of 63 seats nationwide.

Under the State's Plan, the Texas Legislature made changes to District 23 to protect the incumbent, Congressman Canseco, by including Republican-leaning areas—as is its prerogative. By all objective measures, including HCVAP, which was increased from 58.4% to 58.5%. and Spanish Surname Voter Registration ("SSVR"), which was increased from 52.6% to 54.8%, the State's Plan increased the opportunity of Latino voters to elect a

candidate of their choice. Nevertheless, as detailed next, the district court majority made significant and unjustified changes to District 23 that decreased these objective measures while increasing the political opportunities for a Democrat to be elected in the district.

B. In Drawing District 23, The District Court Made Changes For Political Gain, Not To Correct Actual Or Likely Violations Of The Law

Despite the increase in HCVAP and SSVR in the State's Plan, the district court majority nevertheless made, by its own admission, "significant changes" to District 23. JA 142. It did so without making concomitant findings of any possible violation of federal law.

The district court was correct that the changes to District 23 are "significant." District 23 in the Interim Congressional Plan has only a 61.2% population overlap with its benchmark population. Yet the district court did not provide, nor can the appellees provide, a colorable justification for disturbing 38.2% of the district. Additionally, the district court's map actually *decreased* HCVAP levels in District 23 from 58.5% to 57.3%.

Beyond these changes, which are reflected by objective criteria, the district court made the following significant compositional changes to District 23:

First, the Interim Congressional Plan unjustifiably swaps Republican-leaning Anglo voters

for Democrat-leaning Anglo voters in Bexar County.[4] While the population growth in Texas over the past decade requires some Bexar County residents to be moved out of District 23, the Court did not simply carve out the excess population necessary to accommodate this growth (if it had, then the population overlap between the Interim Congressional Plan and the benchmark would have far exceeded 61.2%). Instead, the majority "move[d] the lines by swapping Republican-leaning Anglo voters in northwest Bexar County for Democrat-leaning Anglo voters in west-central San Antonio." JA 154.

No legal principle requires a district court to swap Republican voters for Democrat voters. The majority plainly subrogated political affiliation for legal reasoning while radically altering the Texas political landscape, eliminating core constituencies from Districts 20 and 23, and severing a large number of citizens' historical ties to their current congressional districts.

Second, the interim map places Democrat-voting Maverick County wholly within District 23. If Maverick County was to be made whole, placing it within District 28 was the more logical choice given the significant population growth in the San Antonio and El Paso areas, both of which already comprise a

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[4] In the benchmark map, the area north of Loop 1604 between State Highway 16 and U.S. Highway 281 in Bexar County (a Republican-leaning area) is in District 23, whereas the area of west-central San Antonio east of Loop 1604 and south of State Highway 16 (a Democrat-leaning area) is in District 20.

significant portion of District 23. Moreover, the inclusion of Maverick County in District 28 would promote the preservation of communities of interest because Eagle Pass, the only incorporated city in Maverick County, shares more commonalities with the neighboring border city of Laredo than the sprawling urban areas of San Antonio or El Paso. Again, no *legal* justification exists for this change—the change results only in an increase in Democratic votes in District 23.

Third, the interim map unjustifiably severs the El Paso community of interest while encroaching District 23 into historical sections of District 16. JA 154.[5] In the benchmark, 100% of the city of El Paso and 95% of El Paso County are in District 16, with only the remaining 5% of El Paso County in District 23. While the population growth in El Paso County over the past decade requires approximately 8% of El Paso County to be moved from District 16 to District 23,[6] the district court could have accommodated this population growth in District 23 by (1) maintaining the 5% of El Paso County that is currently in the district and (2) simply carving out

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[5] The district court attempted to justify its modifications by arguing that the interim map (i) kept HCVAP above 50%; (ii) did not decrease SSVR; and (iii) did not lower performance. Instead, the district court argued that its District 23 was an effort to "generally maintain[] the status quo." JA 139. The district court's justifications might be acceptable if it were sitting as the Texas Legislature in the first instance, but they cannot justify a *departure* from the policy choices made by the Legislature as represented in the either the enacted plan or, alternatively, in the benchmark plan.

[6] JA 141-142. *See also* MJA 6.

the additional 8% from District 16 without severely encroaching on the city of El Paso. Rather than utilizing this simple draw that closely adheres to the benchmark's boundaries, the district court unnecessarily split the city of El Paso between Districts 16 and 23.[7]

Thus, the district court majority made several material modifications that could substantially increase the probability of a Democratic candidate winning an election. As Judge Smith recognized, such extreme modifications were not required by any applicable legal authority or by the facts before the court:

> In District 23, Plan C220 decreases the HCVAP from 58.5% in the enacted plan to 57.3%. Yet the court redraws the district to ensure that it qualifies as a Latino opportunity district, relying on "performance" (i.e., probability of electing a Democrat) rather than HCVAP as the factor defining a Latino opportunity district. Ironically, the court increases the "performance" of this Latino district by making it less Latino—doubling the black population and trading Republican-leaning Anglos for Democratic-leaning Anglos. The contradiction that decreasing HCVAP makes a district more Latino demonstrates the

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[7] Both the State's Plan and Plan C216 split a small portion of the city of El Paso along the Texas-Mexico Border, but both plans take the smallest portion possible (by both population and geography) to reach zero deviation.

> error in using "performance" as the defining factor of a Latino opportunity district.

JA 153. The district court's draw of District 23, like the map as a whole, is not supported by any colorable legal or factual claim and should be vacated.

II. Plan C216 Is Highly Instructive For Districts Where Actual Or Likely Violations Must Be Remedied

Amicus agrees with the State that this Court should vacate the Interim Congressional Plan and remand to the district court with instructions to impose Texas' legislatively enacted map as the interim plan while preclearance is pending. If this Court determines that the State's Plan cannot be adopted on an interim basis, however, then Plan C216 will aid the Court with fashioning an appropriate remedy under severe time constraints. Specifically, the proposed boundaries contained in Plan C216 would be highly instructive for determining relevant changes to districts where there may be findings of actual or likely constitutional or statutory violations.

Since Judge Smith endorsed Plan C216, the district court majority found it necessary to attack it as being "largely driven by political ambition." JA 148. This criticism is both ironic and incorrect. This Court has held that use of political considerations for redistricting is a non-justiciable political question. *Vieth v. Jubelirer*, 541 U.S. 267 (2004). As shown above, the Interim Congressional Plan emphasizes partisan performance over VRA and Constitutional

considerations. The irony of the district court's criticism, of course, is the fact that the Interim Congressional Plan is the only map discussed herein that decreases HCVAP in District 23 from the benchmark. In contrast, Plan C216 actually *increases* the HCVAP in District 23.

The majority also criticized Plan C216 as a "thinly disguised version of the State's unprecleared plan." JA 149. *Amicus* does not dispute that Plan C216 defers to the State's Plan in districts that were not the subject of plaintiffs' objections. In doing so, it is Plan C216, rather than the Interim Congressional Plan, that adheres to this Court's precedent. *See Upham v. Seamon*, 456 U.S. 37, 43 (1982).

To be clear, *amicus* does not submit this brief to argue for the wholesale adoption of Plan C216.[8] It was created with Democratic Congressman Cuellar as a bipartisan compromise to "assist the [district] Court in its efforts to prepare a possible interim plan that may be implemented as a fair and workable alternative." Plan C216 modifies the State's Plan to address specific objections made by plaintiffs and makes other concessions in an effort to obtain bipartisan support, not because their claims were legally valid. As such, Plan C216 suffers from the same deficiency as the Interim Congressional Plan in that it does not limit modifications to specific, identifiable violations of law.[9] Nevertheless, because

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[8] *Amicus* does not believe that any aspect of the State's Plan is unconstitutional.

[9] Plan C216 was originally created and submitted to the lower court to "assist the Court in its efforts to prepare a possible interim plan that may be implemented as a fair and workable

Plan C216 gives deference to the State's Plan while attempting to address objections made by plaintiffs, it offers a practical template from which the Court (and the district court) can prepare an interim map for the 2012 elections. JA 152 ("Although far from perfect, [Plan C216] goes a long way toward achieving a fair and legally defensible plan for the 2012 elections.") (Smith, J., dissenting).

Plan C216 made the following modifications, among others, to the State's Plan:

A. Plan C216 Makes Maverick County Whole

The State's Plan split Maverick County between Districts 23 and 28, which was a significant source of contention for the appellees. In order to address this concern, Plan C216 places Maverick County wholly within District 28 for the two reasons discussed *infra*: (1) the inclusion of Maverick County in District 28 is a logical result of the significant population growth in the San Antonio and El Paso areas; and (2) the inclusion of Maverick County in District 28 promotes the preservation of communities of interest because Eagle Pass, the only incorporated city in Maverick County, shares more commonalities with the neighboring border city of Laredo than the sprawling urban areas of San Antonio or El Paso.

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alternative," which is a different procedural posture than "addressing likely constitutional or statutory infirmities."

B. Plan C216 Makes Harlandale Independent School District Whole

The State's Plan split Harlandale Independent School District in San Antonio into Districts 20, 23, and 35. In order to address this concern, Plan C216 places Harlandale Independent School District wholly within District 23.

C. Plan C216 Places Downtown San Antonio in Bexar County Back Into District 20

The State's Plan moved the downtown core of the city of San Antonio from District 20 into the newly created District 35. The incumbent congressman in District 20, in particular, objected to moving this area out of its historic district. In contrast, Plan C216 maintains more of the downtown core of San Antonio, including the Alamo and the San Antonio Federal Complex, in District 20.

D. Plan C216 Splits Nueces County While Maintaining A Community Of Interest

The State's Plan places Nueces County wholly within District 27. Plan C216 splits Nueces County between Districts 25 (more analogous to District 27 in the State's Plan) and 27 (more analogous to District 34 in the State's Plan), but keeps the city of Corpus Christi whole in order to maintain that community of interest.[10]

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[10] In contrast, the Interim Congressional Plan splits the city of Corpus Christi as well as the Port of Corpus Christi.

E. Plan C216 Adds A New Coalition District In The Dallas-Fort Worth Area

During trial, plaintiffs expressed concern that no coalition district was created in the Dallas-Fort Worth area. While section 2 of the VRA does not require the State to create a multi-racial coalition district when no single, geographically compact minority group is large enough to make up a majority of the district,[11] Plan C216 creates a new coalition district in this area in which Latinos and African Americans combine to make up 79.1% of the voting age population.[12] *See Bartlett v. Strickland*, 129 S. Ct. 1231, 1243 (2009) ("Nothing in § 2 grants special protection to a minority group's right to form political coalitions.").

III. The District Court's Other Errors

The parties devote substantial discussion to the various infirmities and strengths of the Interim Congressional Plan and the district court's

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[11] The creation of this coalition district was included in Plan C216 despite Congressman Canseco's strong contention that the State's Plan complies with all constitutional requirements and laws *even in the absence* of a new coalition district in the Dallas-Ft. Worth area. *See* JA 152, ("Plan C220 creates District 33 as a new "coalition" district, yet as even some of the plaintiffs recognize, there is no evidence of voting cohesion, heightened or otherwise, among Latino, Black, and Asian minority groups so as to justify creation of a coalition district, even if such districts could be created by a court. Latinos and Blacks do not vote cohesively in the Democratic primaries in the area of proposed District 33.") (Smith, J. dissenting).

[12] While Latinos comprise 61.3% of the voting age population in the proposed district, the HCVAP is only 39.5%.

underlying order. However, *amicus* offers the following analysis to further highlight the deficiencies of the Interim Congressional Plan.

A. The District Court Did Not Justify Its Failure To Provide Findings To Support Equitable Relief

In entering equitable relief, the district court failed to provide any guidance within its order as to the decisions it was making and affirmatively refused to engage in the prerequisites for imposing preliminary relief. As the State makes clear, the district court's rule—which eschews any analysis of the merits of the underlying claims in exchange for sweeping relief—is in fatal tension with this Court's precedents requiring a party to meet the traditional four-factor test for equitable relief. Appellants Br. 50-52; *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743, 2757 (2010) ("An injunction should issue only if the traditional four-factor test is satisfied."); *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 29 (2008); *eBay Inc. v. MercExchange, L.L.C.* 547 U.S. 388, 391 (2006).

Not discussed in the State's Opening Brief is the district court's failure to follow the Federal Rules of Civil Procedure, which apply equally to lawsuits alleging violations of the VRA or the Constitution as they do to any other suit brought in federal district court. *Georgia v. Ashcroft*, 539 U.S. 461, 476 (2003) ("Section 5 does not limit in any way the application of the Federal Rules of Civil Procedure to this type of lawsuit."). By failing to include the findings and conclusions justifying the issuance of the injunction, the district court's order runs afoul of Federal Rule

52(a) (requiring a court to "state the findings and conclusions that support" its interlocutory injunction) and Rule 65(d) ("Every order granting an injunction . . . must (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail . . . the act or acts restrained or required.").[13] This makes meaningful review nearly impossible. This, too, is reversible error.

The district court proffered three justifications for its failure to abide by traditional equitable considerations: (1) no motion for a preliminary injunction was on file; (2) factual findings would intrude on the preclearance process; and (3) that analysis would stretch judicial resources. The State adequately discusses the fallacies of the district court's second[14] and third[15] justification. Appellants Br. 50-52.

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[13] Although there is some interplay with Federal Rule 65 and the powers granted to three-judge panels pursuant to 28 U.S.C. § 2284, they are not in conflict. Indeed, 28 U.S.C. § 2284 also requires specific findings based on evidence submitted before temporary equitable relief is afforded. *Id.* ("[A single judge] may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted. . . .").

[14] The State adequately discusses the failure of the district court's second justification: that a preliminary decision on the merits would intrude on the preclearance process. JA 93-94. Additionally, *amicus* would point out that while the district court has no jurisdiction over Section 5 proceedings, *United States v. Bd. of Supervisors of Warren County, Miss.*, 429 U.S. 642, 646 (1977), factual findings or legal conclusions as to Section 2 or other constitutional claims have no necessary bearing on the Section 5 preclearance proceeding in front of the

Unaddressed is the first stated justification: the district court's contention that the failure to have a pending motion for a preliminary injunction eliminated the court's need to follow standards accompanying preliminary injunctive relief. JA 96-100. This contention suffers from multiple defects. *First*, this fails as a matter of procedure: no motion is required by the Federal Rules to order injunctive relief—only notice to the affected party and an opportunity to defend against its issuance. Fed. R. Civ. P. 65(a); *Cannon v. U.S. Acoustics Corp.*, 532 F.2d 1118, 1120 (7th Cir. 1976) (rejecting argument that injunction was invalid because it was not made in response to a motion). *Second*, it fails as a matter of fact: the plaintiffs requested a preliminary injunction in their various complaints while specifically requesting the drawing of an interim electoral map. *Perez* Complaint (Doc. 1) at 4; *NAACP* Complaint (Doc. 69) at 11; *MALC* Second Amended Complaint (Doc. 50) at 18. *Third*, it fails as a matter of logic: the implication of a true procedural deficiency would prohibit the district court from

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D.C. Circuit Court. *See Georgia v. Ashcroft*, 539 U.S. 461, 477-78 (2003) ("Section 5 of the Voting Rights Act has a limited substantive goal . . . no matter how unconstitutional it may be, a plan that is not retrogressive should be precleared under § 5.").

[15] The State adequately addresses the incongruity of the district court's attempt to avoid stretching judicial resources too thin by consciously ignoring avenues that would *reduce* the burden on the court. *Amicus* would add that the district court's decision was also odd because it eschewed an application of law to facts—an analysis that a court is inherently equipped to handle—for a political inquiry that, to say the least, is not within the court's traditional skill set.

entering injunctive relief *at all*, not render a party's burden to achieve relief superfluous. The district court had the implication exactly backwards. *Finally*, the argument fails as a matter of common sense: the district court's proposed rule would put the power to avoid the burdens of equity in the hands of the party seeking preliminary relief. No plaintiff challenging a newly enacted electoral map would file a formal motion for a preliminary injunction while knowing that the combination of upcoming elections and a delayed preclearance proceeding could allow the plaintiff to avoid its burden. This cannot be so.

B. The District Court Made Unnecessary Modifications To Districts 10, 27, 31, And 34

In failing to provide any deference to the State's Plan, the district court ignored countless policy decisions made by the Texas Legislature after careful discussions and input among stakeholders. Those decisions reflected the myriad interests of thousands of communities and took into account historic representation, commonality of interests, closeness of geography, and other similar factors. The district court was in no position to have knowledge of those interests, nor is it in a better position to supplant the multitude of decisions with its own notions of the "collective public good." By creating an interim map from whole cloth without knowledge or deference to the Texas Legislature, the district court has recklessly split cities, counties, and school districts from their traditional bases of support.

Below, *amicus* outlines some of the practical effects that the Interim Congressional Plan will have on various communities in Texas contained within Districts 10, 23, 27, 31, and 34 of the Interim Congressional Plan and on the general election as a whole.[16]

1. Districts 10 and 31

The city of Round Rock and Williamson County, both near the city of Austin, have been in District 31 since 1996.[17] Nevertheless, the Interim Congressional Plan splits these communities into Districts 10 and 31 even though neither DOJ nor any plaintiff in the lower court action entered an objection to the configuration of either district.[18]

2. District 27

The city of Corpus Christi (Nueces County) and Nueces County have anchored District 27 since its inception in 1982. The Interim Congressional Plan fractures Nueces County into two congressional districts, neither of which will be anchored in the

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[16] The districts listed and discussed herein are representative, not exclusive, instances of the district court's unnecessary modifications to the State's Plan.

[17] These areas include Round Rock West, the Oaklands, portions of Brushy Creek MUD, Fern Bluff MUD, Avery Ranch, Milwood, the city of Cedar Park, and the city of Leander.

[18] Similarly, neither the United States nor any plaintiff in the lower court action has entered any objection to the configuration of the area generally covered by District 34 in the Interim Congressional Plan. Yet it fractures the communities of Spring Cypress and Tomball in Harris County between Districts 10 and 34.

county. Moreover, Corpus Christi and Nueces County will be the largest Texas city and county, respectively, that do not anchor their own congressional district. JA 152.

The Port of Corpus Christi is split three ways in the Interim Congressional Plan and is now a part of Districts 27, 34, and 15. The new District 27 is anchored in Brownsville, the home of a competing port. District 34 is anchored in Harris County, the home of the competing Port of Houston. District 15, an inland district, is anchored on the Texas-Mexico border and has no coastal interests whatsoever. The conscious (or unconscious) splitting of the Port of Corpus Christi three ways is another cautionary example of the dangers caused by a judicial panel substituting its own political judgment for that of the Texas Legislature, which is eminently more knowledgeable and qualified to make such decisions.

3. District 34

The Interim Congressional Plan includes two examples of water-only contiguity in District 34.[19] Contiguity has long been a requirement in congressional apportionment. *See* Apportionment Act of 1842, 5 Stat. 491 (providing that Representatives must be elected from single-member

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[19] Nueces and Aransas counties are linked via the intercoastal waterway and barrier islands only, as are Aransas County and Calhoun County. The two examples of water-only contiguity in the Interim Congressional Plan are not even functionally contiguous, as they have no ferry service or bridges linking the two separated areas, making it impossible for Congressman Blake Farenthold to reach the rest of his district outside his home county except by boat via the Gulf of Mexico.

districts "composed of contiguous territory."); Apportionment Act of 1862, 12 Stat. 572; Apportionment Act of 1872, 17 Stat. 28, § 2. While water-only contiguity has been used before in extreme cases, it is disfavored. *See Larios v. Cox*, 300 F. Supp. 2d 1320, 1350 (N.D. Ga. 2004) (criticizing water contiguous and point contiguous districts as "marginally contiguous"). It surely has no place in a court-drawn plan.

C. The Interim Congressional Plan Contains Unlawful Population Deviations

The Interim Congressional Plan has a top-to-bottom population deviation of 794 persons (.11%), an average deviation of 148 persons between congressional districts. While small, these deviations are unacceptable for a court-drawn plan. *See Karcher v. Daggett*, 462 U.S. 725, 731-734 (1983) ("Adopting any standard other than population equality . . . would subtly erode the Constitution's ideal of equal representation."). The district court attempts to justify its population deviations by "exigent circumstances" and a desire to avoid precinct splits. JA 150. This argument falls flat.

The district court had multiple zero-deviation plans before it to choose from, including Plan C216, as viable options for interim plans. With the modern redistricting software at the district court's disposal, which easily locates the appropriate blocks to achieve zero deviation, a lack of time is not a legitimate justification for the population deviations contained in the Interim Congressional Plan. Moreover, many Texas counties had already changed

their precinct lines—and precleared those changes—to match those in the State's Plan before the district court released the Interim Congressional Plan. The adoption of this plan, therefore, forced these counties to change their adopted precincts yet again while the district court provided faint justification for maintaining whole precincts.

D. The District Court's Interim Plan Added Coalition Districts In A Misguided Effort To Achieve Proportionality That Was Already Present In The Enacted Plan

The district court incorrectly concluded that the number of Latino opportunity districts in the enacted plan were not reflective of statewide Latino population growth. JA 173. It is undisputed that minority population growth, especially in the Latino community, accounted for much of the population increase in Texas over the past decade. Specifically, the Latino population in Texas grew by 2,791,255 and the African-American population grew by 522,570, while the Anglo population increased by fewer than 465,000 people. JA 133. However, because the bulk of that growth has been in either non-citizen Latinos or those younger than voting age, the growth in total Latino population is not reflected in the HCVAP or in its subset, SSVR. Thus, Texas had a statewide SSVR of 19.5% in 2000 and 21.6% in 2010, an increase of only 2.1% over the last decade.

Nevertheless, the district court conflated large Latino total population growth with the small growth in eligible Latino voters and sought to draw a

certain preordained number of new Latino opportunity districts—even to the extent of drawing so-called coalition districts in which Latinos do not comprise the majority of the citizen voting age population, in proportion to Latinos' share of the total population. They did this despite the fact that 8 of the 36 districts in the State's Plan, or 22%, are Latino opportunity districts. This percentage is directly proportional to the HCVAP in the state of Texas, despite the fact that the VRA expressly does not provide any basis for proportional representation. *See* 42 U.S.C. § 1973(b). Regardless, the district court wrongly applied *both* the facts and the law in a failed attempt to achieve its own goals with regard to proportionality.

CONLUSION

Amicus respectfully requests that this Court vacate the Texas district court's interim redistricting plan for congressional elections in 2012 and remand with instructions to impose the State's Plan *in toto* on an interim basis. If the Court vacates the Interim Congressional Plan but determines that the State's Plan cannot be adopted *in toto* on an interim basis, then *amicus* urges the Court to use the proposed boundaries in Plan C216 as a practical template from which it can provide specific instructions for the drawing of a new interim map. This guidance will help ensure that the district court does not make the same errors on remand.

Respectfully submitted,

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AMICUS CURIAE BRIEF

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

RICK PERRY, GOVERNOR OF TEXAS, ET AL.,
Appellants,

v.

SHANNON PEREZ, ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Texas

BRIEF OF *AMICUS CURIAE* CATO INSTITUTE IN SUPPORT OF NEITHER PARTY

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QUESTIONS PRESENTED

1. Has the modern application of the Voting Rights Act resulted in an exercise of extra-constitutional authority by the federal government that conflicts with the Act's very purpose?

2. Can Voting Rights Act Sections 2 and 5 coexist?

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INTEREST OF *AMICUS CURIAE*[1]

The interest of *amicus* here arises from its mission to protect the rights the Constitution guarantees to all citizens, particularly in their capacities as political candidates, voters, and citizens of the several states.

Established in 1977, the Cato Institute is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, publishes the annual *Cato Supreme Court Review*, and files *amicus* briefs.

This case concerns Cato because it implicates a constitutional overreach too long suffered in jurisdictions where the federal government found, nearly half a century ago, that African-American voters had been disenfranchised. The goal of preventing voter disenfranchisement is unquestionably just (and constitutional), but it is no longer served by Sections 2 and 5 of the Voting Rights Act. These provisions now only perpetuate the very race-based districting decisions the Act was intended to stop.

Cato has no direct interest in the outcome of this case. Its sole interest is to ensure that elections are administered in as race-neutral a manner as possible.

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[1] Pursuant to this Court's Rule 37.2(a), a letter from Appellants' counsel consenting to the filing of this brief has been submitted to the Clerk, while Appellees' counsel have lodged blanket consents. Pursuant to Rule 37.6, *amicus* states that no part of this brief was authored by any party's counsel, and that no person or entity other than *amicus* funded its preparation or submission.

STATEMENT OF THE CASE

Amicus incorporates by reference the description of facts and procedural history outlined in the Appellants' brief, but takes no position on any factual disputes between the parties.

SUMMARY OF ARGUMENT

"The historic accomplishments of the Voting Rights Act are undeniable." *Nw. Austin Mun. Util. Dist. No. One v. Holder, ("NAMUDNO")*, 129 S. Ct. 2504, 2511 (2009). Its modern application, however, is problematic to say the least. Sections 2 and 5 conflict with each other, with the Fourteenth and Fifteenth Amendments, and with the orderly implementation of free and fair elections. These problems and tensions—constitutional, statutory, and practical—undermine the VRA's great legacy of vindicating the voting rights of all citizens.

This case exemplifies all that is wrong with the Voting Rights Act as it now exists. Particularly in jurisdictions covered by Section 5, the decennial redistricting process produces utterly predictable litigation, the outcome of which is often dependent on various judges' views (and this Court's incremental clarifications) of how to satisfy both the VRA's race-conscious mandates and the Fifteenth Amendment's command to treat people of all races equally under law. When added to state legislators' partisan interests, this navigation between the VRA's Scylla and the Constitution's Charybdis inevitably crashes the redistricting vessel onto judicial shoals.

Such is the case here. If the San Antonio district court's interim maps satisfy Section 5, would that re-

solve this case? If they avoid Section 2 violations, would that do the trick? If they technically violate the VRA but still guarantee that no voter is disenfranchised and no racial minority group's political power is diminished?

What if the lower court gave insufficient deference to the Texas legislature's maps but those maps themselves violate Sections 2 or 5? Or if the D.C. district court—the one with jurisdiction over the Section 5 issues—would have drawn (and still may draw) substantially different maps but the San Antonio court gave sufficient deference? Or if the dissenting judge's (more deferential) state house and congressional maps satisfy the VRA, but the majority's do too?

What if the lower court considered only and correctly ruled on the Section 2 claims before it, acknowledging that the D.C. court had sole jurisdiction over the Section 5 issues? Or if it consciously resolved the Section 5 issues on an interim basis but implicitly deferred to the D.C. court's ultimate ruling? If the interim maps satisfy the VRA *and are the exact maps this Court would draw* but the San Antonio court applied the wrong standards to get there?

Because the jurisprudence is muddled and factbound, it's impossible to give a definitive positive answer to any of these questions. Given this uncertainty, neither state legislatures nor courts can do their work properly—which indicates a fundamental flaw in the system we use to draw and approve political districts. This systemic breakdown that the 2011-12 Texas redistricting process has revealed should give this Court pause as it considers what guidance to give states going forward.

Amicus supports no party here because it takes no position on whether the San Antonio district court's interim maps satisfy the VRA or give sufficient deference to the Texas legislature's maps. Instead, this brief highlights the conflict between the VRA and the Constitution and the practical difficulties that conflict engenders for election administration. After a general discussion to that effect, the brief explores one specific context in which the conflict is particularly manifest: the incongruity between Sections 2 and 5. District courts struggle mightily to extrapolate objective, enforceable standards from a confusing case law under which "considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 seem to be what save it under § 5." *Georgia v. Ashcroft*, 539 U.S. 461, 491-92 (2003) (Kennedy, J., concurring).

The Voting Rights Act has exceeded expectations in making this nation "a more perfect union." Barack Obama, A More Perfect Union, Address at the National Constitution Center (Mar. 18, 2008) (transcript available at http://www.americanrhetoric.com/speeches/barackobamaperfectunion.htm). While celebrating its achievements, we must recognize that the VRA's success has obviated its constitutional legitimacy. Moreover, as many redistricting cycles have demonstrated, the VRA's growing incongruities present the prototypical situation of legal problems that are (more than) capable of repetition, yet evading (definitive) review. *See, e.g., Roe v. Wade*, 410 U.S. 113, 125 (1973) (internal citations omitted). *Amicus* respectfully urges this Court to set this case for reargument regarding the continuing viability of this historic piece of legislation.

ARGUMENT

I. THIS COURT MUST RECONSIDER THE CONTINUING VIABLITY OF THE VOTING RIGHTS ACT BECAUSE THIS HISTORIC LEGISLATION NO LONGER SERVES ITS ORIGINAL PURPOSE

Assume *arguendo* that the San Antonio district court's redistricting maps are legally correct. That assumption may seem to decide the entirety of the case before this Court. No such luck, however, given the complex (and disputed) meaning of "legally correct" in this context. The San Antonio court tried to apply the plain meaning of a statute, Section 5, which states that a state map is presumed illegal—and to reconcile a jurisprudence forbidding enforcement of illegal maps, *Branch v. Smith*, 538 U.S. 254, 265 (2003), even while judges must defer to the districting decisions of state political actors, *Upham v. Seamon*, 456 U.S. 37, 40-42 (1982).

That is, even a map identical to one approved by the Justice Department or the federal court during the redistricting process 10 years earlier would be presumed unenforceable—because of the "one man, one vote" principle and the need to account for population changes since the previous census (even if no net population changes warrant district redrawing). *See, e.g.*, *Branch*, 538 U.S. 254; *Lopez v. Monterey County*, 525 U.S. 266 (1999). At the same time, even if its maps "neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color," thus facially satisfying the language of Section 5, the district court may have violated the law by substituting its judgment for that of the state legislature. *Upham*, 456 U.S. at 41-42.

The problem, then, isn't so much with any court's application of Section 5 to the map-drawing process (on which reasonable judges of good faith can disagree) or even state legislators' partisan gerrymandering—which is subject to strict judicial scrutiny when race is the "overriding, predominant force" in the redistricting process, *Miller v. Johnson*, 515 U.S. 900, 909 (1995) (interpreting *Shaw v. Reno*, 509 U.S. 630 (1993))—but with a statute that presumes that *anything* a state does in this area is illegal unless proven otherwise.

If anything the state does *ab initio* is illegal, then why should a court give *any* deference to it? Because neither the text nor purpose of the VRA suggest that federal judges should draw redistricting maps. While courts do so under certain circumstances, "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than that of a federal court...absent evidence that these state branches will fail to timely perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Branch*, 538 U.S. at 261-62 (internal citations omitted). Indeed, the federal law provision permitting at-large congressional elections when state districts are not timely drawn, 2 U.S.C. § 2a(c) (1996), is further evidence that judges are not meant to draw districting maps, even in jurisdictions subject to Section 5, except under exceptional circumstances.

That logical conundrum—which likely motivated this Court to note probable jurisdiction—raises the question of why the San Antonio court was drawing maps in the first place. After all, the D.C. court is

handling the Section 5 preclearance case while the San Antonio court entertains a smattering of Section 2 claims. The San Antonio court dutifully held evidentiary hearings relating to these latter issues but, at the parties' request, continued trial indefinitely pending the resolution of the preclearance process. It is only because the D.C. court refused to expedite its case—scheduling trial for the end of January, with little hope of a final decision in time to hold primaries that don't jeopardize the entire 2012 elections—that the San Antonio court felt obligated to draw interim maps. This unusual procedure was bound to end up before this Court regardless of how the San Antonio court dealt with its unenviable predicament.

And still, even if this Court summarily affirms the San Antonio court's maps, its work will have mostly been for naught; the D.C. court will either approve the Texas legislature's maps or, in rejecting them, provide for a remedial map-drawing process unlikely to match the San Antonio court's. The San Antonio court has thus been forced to deliver a premature (even stillborn) baby, or took it upon itself to do so because the alternative was to let the mother—the 2012 elections—die. Regardless, this process demonstrates that Section 5 jurisdictions are ill-advised to seek preclearance from the D.C. court, at least if they hope to receive it in time to actually hold their elections.

That's an unfortunate lesson—because Congress intended for covered states to go through the D.C. district court; the option of obtaining DOJ preclearance was an eleventh-hour addition to the statute. Appellants have been criticized for going the "slow" route, but they are in fact using the method Congress intended in 1965. "The original voting rights bill did

not contain this alternative preclearance method," but "the [legislative] history which does exist . . . indicate[s] that Congress in no way intended that the substantive protections of § 5 be sacrificed in the name of expediency." *McCain v. Lybrand*, 465 U.S. 236, 246 (1984) (internal citations omitted).

Moreover, the current episode involves an all-too-foreseeable misuse of judicial resources. The resource-intensive case below forced the district judges in San Antonio to transfer dozens of matters from their dockets—typically pressing local criminal and habeas cases—to less-taxed Mississippi district courts. For all this sacrifice, the San Antonio court couldn't even rule on the merits of *either* the Section 2 or Section 5 issues. With no guidance from existing law as to what to do under the circumstances, the San Antonio court wasted time and resources drawing interim maps based on its own sense of good public policy and due deference. Again, taking no position as to the merits of the lower court's judgment, *amicus* contends that there must be a better way.

Finally, the Section 5 preclearance system is an anachronism that, regardless of the geography of this particular case, can no longer be justified as a matter of constitutional law or policy. As this Court found two terms ago,

> The evil that § 5 is meant to address may no longer be concentrated in the jurisdictions singled out for preclearance. The statute's coverage formula is based on data that is now more than 35 years old, and there is considerable evidence that it fails to account for current political conditions. For example, the racial gap in voter registration and turnout is lower in

> the States originally covered by § 5 than it is nationwide.

NAMUDNO, 129 S Ct. at 2512 (citing Edward Blum & Lauren Campbell, Assessment of Voting Rights Progress in Jurisdictions Covered Under Section Five of the Voting Rights Act 3-6 (American Enterprise Institute, 2006)).

Indeed, the list of Section 5 jurisdictions is bizarre: six of the eleven states of the Old Confederacy (and certain counties in Florida, North Carolina, and Virginia), plus Alaska, Arizona, and some counties or townships in five other states as diverse as New Hampshire and South Dakota. Curiously, (only) three New York counties are covered, all boroughs in New York City. What is going on in the Bronx, Brooklyn, and Manhattan that is not in Queens or Staten Island? Four members of this Court famously hail from Gotham, each from a different borough; perhaps they know something the rest of us don't.

And all of this mess stems from the presumption that redistricting actions in particular places, including all of Texas, are illegal until proven otherwise. Even if the Justice Department raises no objection to a state-approved map within the 60-day statutory period, litigation can and will occur later. Why this unusual presumption? Because of events from the Jim Crow era. Three generations of federal intrusion on state prerogatives have proven to be more than sufficient to kill Jim Crow. This Court needs to address the fundamental constitutional defects that have arisen in administering the modern VRA.

A. The VRA, Once Justified by Jim Crow, Is Now "an Eye Glazing Mess"[2]

1. Basic History

The Voting Rights Act has become "one of the most ambitious legislative efforts in the world to define the appropriate balance between the political representation of majorities and minorities in the design of democratic institutions." Richard Pildes, *Introduction* to DAVID EPSTEIN, THE FUTURE OF THE VOTING RIGHTS ACT xiv (2006).

Defining that appropriate balance was not the VRA's original aim, however. Its original purpose was simply to enfranchise southern blacks who, a century after the Civil War, were still being denied their voting rights. Indeed, "[t]he statute has become such an eye glazing mess that it's easy to forget that in 1965 it was beautifully designed and absolutely essential." Abigail Thernstrom, *The Messy, Murky*

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[2] This section is based largely on the work of Abigail Thernstrom, legal historian and vice-chairman of the U.S. Commission on Civil Rights, particularly her book VOTING RIGHTS—AND WRONGS: THE ELUSIVE QUEST FOR RACIALLY FAIR ELECTIONS (2009) and her series of blogposts about the book at the Volokh Conspiracy blog. *See The Messy, Murky Voting Rights Act: A Primer*, THE VOLOKH CONSPIRACY (Aug. 17, 2009, 3:15 AM), http://volokh.com/2009/08/17/the-messy-murky-voting-rights-act-a-primer; *Race-Conscious Districting: Needed and Costly*, THE VOLOKH CONSPIRACY (Aug. 18, 2009, 3:16 AM), http://volokh.com/2009/08/18/race-conscious-districting-needed-and-costly; *DOJ: A Law Office Working for Minority Plaintiffs*, THE VOLOKH CONSPIRACY (Aug. 19, 2009, 3:16 AM), http://volokh.com/2009/08/19/doj-a-law-office-working-for-minority-plaintiffs; *A Period Piece*, THE VOLOKH CONSPIRACY (Aug. 20, 2009, 3:15 AM) http://volokh.com/2009/08/20/a-period-piece; *Looking Forward*, THE VOLOKH CONSPIRACY (Aug. 21, 2009, 3:16 AM), http://volokh.com/2009/08/21/looking-forward.

Voting Rights Act: A Primer, THE VOLOKH CONSPIRACY (Aug. 17, 2009, 3:15 AM), http://volokh.com/2009/08/17/the-messy-murky-voting-rights-act-a-primer.

When Congress enacted the VRA, Jim Crow was not going quietly into the historical night. Black ballots were the levers of change that white supremacists most feared, so southern blacks were kept from the polls by fraudulent literacy tests, intimidation, violence, and myriad other devices. Enforcing the Fifteenth Amendment thus required an overwhelming exercise of federal power—radical legislation that involved an unprecedented intrusion of federal authority into state and local elections. *See Lopez*, 525 U.S. at 282 (noting that Section 5, "which authorizes federal intrusion into sensitive areas of state and local policymaking, imposes substantial 'federalism costs'" (quoting *Miller v. Johnson*, 515 U.S. at 926)).

The VRA effectively put southern states under federal electoral receivership. It suspended literacy tests, provided for the use of federal registrars, and demanded that racially suspect jurisdictions obtain preclearance of all proposed electoral changes. A reverse-engineered statistical trigger identified the "covered" jurisdictions; the VRA's framers knew which states they wanted covered and determined the formula to pull those places into Section 5's purview.

The burden to prove that changes in voting procedure were free of racial animus lay on the Section 5 jurisdictions. A school district that wanted to enlarge its board, for example, had to demonstrate the absence of discriminatory purpose or effect. Under this paradigm, even suspected discrimination was sufficient to invalidate a proposed change.

Justice Black worried that the provision compelled states to "beg federal authorities to approve their policies," so distorting our constitutional structure as to nearly eradicate the distinction between federal and state power. *South Carolina v. Katzenbach*, 383 U.S. 301, 358 (1966) (Black, J., concurring in part and dissenting in part). It was a constitutionally serious point, and although the Court upheld the VRA against that initial challenge in the midst of deeply troubling discriminatory practices, Justice Black's words should not have been forgotten.

At the time, however, all other attempts to secure Fifteenth Amendment rights had failed. The VRA succeeded in its original aim: Southern black voter registration skyrocketed. Ensuring electoral equality proved more difficult than originally understood, however, as political subdivisions structured elections to minimize the number of blacks likely to win.

To combat these white-supremacist maneuvers, this Court in 1969 expanded its definition of discriminatory voting practices to include devices that diluted the impact of the black vote. *See Allen v. State Bd. of Elections*, 393 U.S. 544 (1969). It thus brought at-large voting, districting lines, and other election devices that had been used to deprive blacks of expected electoral wins within the scope of Section 5. But in so doing the Court put VRA enforcement on a slippery slope toward reserving offices for minorities, even in places with no history of racist exclusion. From there, racial and ethnic representation became the only logical standard by which to measure true electoral opportunity; anything less than proportional office-holding suggested a "diluted" minority vote.

Civil rights advocates saw proportional outcomes as the proper measure of opportunity—in employment, education, and contracting, too—and those who wrote, interpreted, and enforced the law consistently took their cues from these advocates. Thus, when DOJ rejected a districting map, the jurisdiction was obligated to go back to the drawing board—with the understanding that it had to create the maximum number of safe black legislative seats possible. Indeed, this Court was forced to put a stop to such pressure from the DOJ when it held that there is not, in fact, a requirement that districting plans contain the maximum number of majority black districts. *Abrams v. Johnson*, 521 U.S. 74, 86 (1997).

Section 5 was an emergency provision with an expected life of five years that instead has been repeatedly renewed. Every renewal became an occasion for expanding the Act; never did Congress consider whether the law's unprecedented reach should instead be reduced in recognition of its success. Thus, even as black political participation increased, federal power over local electoral affairs grew.

In the 1970s, the government placed still more groups and places into Section 5's clutches. An arbitrary, careless change in the statistical trigger, for example, made those three New York boroughs subject to preclearance, even though black New Yorkers had been freely voting since the enactment of the Fifteenth Amendment in 1870, and had held municipal offices for decades. Hispanics, Asian Americans, American Indians, and Alaskan Natives became eligible for federal protection, even though their experience with exclusion from the polls was not remotely comparable to that of southern blacks. It was during

this time that preclearance was also extended to Texas and other previously exempt locales.

In 1982, Congress rewrote what had been an innocuous preamble, Section 2, morphing it into a powerful tool to attack election practices anywhere in the nation that had the "result" of denying the right to vote on account of race. Indeed, this Court had already read Section 5 to provide a remedy for vote dilution that squared with the structure of the Voting Rights Act, and delegated to distant DOJ attorneys a limited task: stopping the institution of new electoral arrangements that undermined the 1965 VRA. *Beer v. United States*, 425 U.S. 130, 141 (1976).

But Section 2 as rewritten guaranteed electoral equality in some absolute sense—undefined and indefinable. The obvious inquiry, one of proportionality, rests on profound misunderstandings about the "natural" distribution of various groups across the sociopolitical landscape. Racist exclusion, not statistical imbalance, should instead have been the concern.

2. Moving in the Wrong Direction

The VRA thus moved in an unanticipated direction over time—a change that had both benefits and costs. Its original vision was one all decent Americans share: equality of access to the political process, with blacks free to form political coalitions and choose candidates in the same manner as everyone else. But in certain places, it soon became clear, equality could not be achieved simply by giving blacks the vote. Ballot access was insufficient after centuries of slavery, another century of segregation, ongoing racism, and persistent resistance to black political power. More aggressive measures were needed.

Consequently, blacks came to be treated as politically different; entitled to a unique political privilege. The VRA was interpreted (and later amended) to mandate the drawing of legislative districts effectively reserved for African-American candidates. The power of federal authorities to force jurisdictions to adopt "racially fair" maps conflicted starkly with the Constitution's federalism guarantees, while the entitlement of designated racial groups to legislative seats was similarly discordant with traditional notions of democratic competition.

A century of Fifteenth Amendment violations, however, demanded what might be called "federal wartime powers." As on other occasions when wartime powers were invoked, the consequence was a serious distortion of constitutional order. Abigail Thernstrom, *Race-Conscious Districting: Needed and Costly*, THE VOLOKH CONSPIRACY (Aug. 18, 2009, 3:16 AM), http://volokh.com/2009/08/18/race-conscious-districting-needed-and-costly. Such a temporary distortion was justified in 1965, but it is not today.

The history of whites-only legislatures in the South made the presence of blacks both symbolically and substantively important. Racially integrated governments work to change racial attitudes. Most southern whites had little or no experience working with blacks as equals, so their views rapidly changed when blacks became colleagues.

Most Americans reject policies that distribute benefits and burdens on the basis of race or ethnicity. While it's relatively easy to take an uncompromising stance against such classifications in, say, higher education, it's harder to do so when the issue is districting designed to increase black office-holding.

Context matters. The University of Michigan's racial preferences, for example, were not dismantling a dual system. The contrast with the realm of politics is marked. There are no objective qualifications for political office—the equivalent of a college or professional degree, a minimum SAT score or grade-point average, or relevant work experience. And race-based districts also work precisely as intended, electing blacks and Hispanics to legislative seats. Such descriptive representation has demonstrably had an importance in Texas far greater than increasing the number of black and Hispanic students at UT-Austin.

Even if race-conscious maps were once temporarily justified to overcome systemic racism, however, that experience does not in turn justify *today's* racially gerrymandered districts. Serious costs have accompanied race-driven districting of the brand Texas alleges here—costs that have increased as racism has waned. Nearly 20 years ago, this Court described race-driven maps as "an effort to 'segregate . . . voters' on the basis of race." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (O'Connor, J.) (quoting *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960)). Such maps thus threaten "to stigmatize individuals by reason of their membership in a racial group." *Id.* at 631.

Racially gerrymandered districts keep "RACE, RACE, RACE," at the forefront of our minds, voting rights scholars T. Alexander Aleinikoff and Samual Issarcharoff wrote in *Race and Redistricting: Drawing Constitutional Lines after* Shaw v. Reno, 92 MICH. L. REV. 588, 610 (1993). Such racial sorting creates advantaged and disadvantaged groups; some that are privileged and some that are subordinate. The majority-minority districts which the DOJ demanded

have become safe for minority candidates but have also turned white voters into what these scholars call "filler people." *Id.* at 601. Whites are irrelevant to the outcome of elections in racially drawn districts except in black-on-black contests.

In short, America has experienced an amazing transformation since 1965. The costs of race-conscious districting now far outweigh their benefits—and they represent an obstacle to political equality. Black political progress would likely be greater if race-conscious districting were viewed as a temporary remedy for unmistakably racist electoral practices (the lesser of various evils) rather than a tool for "racially proportionate" representation (which cannot be constitutionally justified).

3. The Justice Department's Complicity in Perverting Section 5

Regardless of Congress's intent, jurisdictions seeking Section 5 preclearance quickly began filing most requests with the Justice Department rather than the D.C. district court. DOJ was expected to function as a surrogate court, using legal standards from court opinions in a process akin to administrative decisionmaking. The reality has been quite different, as *Miller v. Johnson*, 515 U.S. 900, demonstrates.

Miller tells the remarkable story of a lawless Republican DOJ that forced Georgia to accept a districting plan drawn by the ACLU in its capacity as advocate for black state legislators. The ACLU's "max-black" plan served GOP interests by "bleaching" districts of black (and presumably Democratic) voters.

Georgia's redistricting committees increased the number of majority black congressional districts from

one to two—even though the state had no obligation give minorities more "safe" districts. After all, the point of preclearance was to prevent states from depriving blacks of the gains that basic enfranchisement promised, not to ensure a "fair" number of seats. *Beer*, 425 U.S. at 140. Georgia plainly met the law's demands, but DOJ still rejected its maps, informing the state that it had not adequately explained its failure to create a third majority-minority district. This "third district," however, would have connected neighborhoods in metropolitan Atlanta to black residents on the coast, 260 miles away and "worlds apart in culture." *Miller v. Johnson*, 515 U.S. at 908. "In short," this Court continued, "the social, political and economic makeup of the Eleventh District [told] a tale of disparity, not community." *Id.*

The preclearance process was not supposed to work as it did in Georgia and countless other jurisdictions, large and small, during the Reagan-Bush years. By 1991, when the Justice Department reviewed Georgia's plan, the vision of DOJ as a more "accessible" court had completely broken down. The Civil Rights Division's Voting Rights Section was operating as "a law office for minority plaintiffs, working as partners with civil rights advocacy groups." Abigail Thernstrom, *DOJ: A Law Office Working for Minority Plaintiffs*, THE VOLOKH CONSPIRACY (Aug. 19, 2009, 3:16 AM), http://volokh.com/2009/08/19/doj-a-law-office-working-for-minority-plaintiffs.

As UCLA law professor Daniel Lowenstein wrote,

> Much is at stake for politicians and the interests they represent in a districting plan, and enacting a plan is typically a difficult and contentious process. Once they strike a deal, they

> want it to stay struck, and therefore they tend to be risk-averse with respect to possible legal vulnerabilities in a plan.

Daniel Hays Lowenstein, *You Don't Have to Be Liberal to Hate Racial Gerrymandering Cases*, 50 STAN. L. REV. 779, 794 (1998).

A risk-averse plan was one that accepted racial quotas, which DOJ believed in as a matter of principle throughout the 1980s and 1990s: district segregation in just the right numbers to ensure the election of blacks roughly in proportion to their population. Appellants may have thought—rightly or wrongly—that this commitment to proportionality had returned under the current administration, which is probably why they pursued preclearance in the D.C. court.

4. Congress Exacerbates the Mire

In 2006, Congress nearly unanimously renewed the VRA, including Section 5, for another 25 years (Section 2 was made permanent in 1982). It had been persuaded that at least until 2031 minority voters in covered jurisdictions (according to a formula last updated in 1975) would remain unable to participate in political life without electoral set-asides—and that those jurisdictions could not be trusted to set election rules without federal oversight. Such pessimism is not benign; it distorts public discourse and the formulation of policies involving race.

The VRA is disconnected from the reality of modern American life. By every measure, U.S. politics has been transformed since the 1960s. Blacks hold office at all levels of government—not least the presidency—and have reached the pinnacles of every field of private endeavor. Yet a sustained campaign by

civil rights groups persuaded Congress that race relations remain frozen in the past and that America is still plagued by persistent disfranchisement. Activists were determined to garner such overwhelming support for renewal that nobody would dare consider whether Section 5 was still appropriate in the 21st century. As this case shows, they succeeded.

Congress thus ratified the conventional wisdom in the civil rights community and the media. "Discrimination [in voting] today is more subtle than the visible methods used in 1965. However, the effects and results are the same," the House Judiciary Committee reported. H.R. Rep. No. 109-478, at 6 (2006). "Vestiges of discrimination continue to exist . . . [preventing] minority voters from fully participating in the electoral process," the amended statute itself read. Pub. L. No. 109-246 § 2(b)(1)(2) (2006).

No evidence supported such an extraordinary claim. The skepticism of those who cannot forget Jim Crow's brutality is understandable, but the South they remember is gone (and the discrimination that existed there never did in Alaska, Arizona, Manhattan, etc.). Today, southern states have some of the highest black voter-registration rates in the nation; over 900 blacks hold public office in Mississippi alone. Abigail Thernstrom, VOTING RIGHTS—AND WRONGS: THE ELUSIVE QUEST FOR RACIALLY FAIR ELECTIONS 11 (2009). Massive disfranchisement is ancient history, as unlikely to return as segregated water fountains. America is no longer a land where whites hold the levers of power and minority representation depends on extraordinary federal intervention, consistent with the Constitution only as an emergency measure.

By the 2008 presidential election, a stunning 69.7 percent of the black population was registered to vote. Thom File & Sarah Crissey, U.S. CENSUS BUREAU POPULATION REPORTS: VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2008 4 (2010) *available at* http://www.census.gov/prod/2010pubs/p20-562.pdf. Black turnout rates, as well, have been impressive. *Id.* By 2008, there were 41 members of the Congressional Black Caucus; almost 600 African-Americans held seats in state legislatures, and another 8,800 were mayors, sheriffs, school board members, and the like. Forty-seven percent of these black public officials lived in the seven Section 5 states, even though those states contained only 30 percent of the nation's black population. Thernstrom, VOTING RIGHTS—AND WRONGS 203. The bottom line is indisputable: *Section 5 states elect black candidates at higher rates than the rest of the country.*

"Voting rights advocates" argue that elections remain racially polarized based on the questionable premise that whites and blacks prefer different candidates in the abstract. If this were true, however, racial polarization would exist wherever black candidates run campaigns unlikely to attract white majorities. By that definition, all districts where whites are more conservative than blacks are racially polarized.

Without the threat of federal interference, would southern state legislatures feel free to engage in disfranchising mischief? It seems wildly improbable, even in the Deep South. Indeed, the most recent VRA remedial order in Mississippi involved the black Democratic Party chairman of Noxubee County conspiring to discriminate against white voters. *See, e.g., Appeals Court Upholds Noxubee Voting Rights*

Ruling, PICAYUNE ITEM, (Mar. 3, 2009), http://picayuneitem.com/statenews/x2079285859/Appeals-court-upholds-Noxubee-voting-rights-ruling.

In the same vein, a 2008 Clarksdale, Mississippi, newspaper editorial noted, "[t]here's probably less chance today of election discrimination against minorities occurring in Mississippi—given the high number of African-Americans in elected office, including as county election commissioners—than in many parts of the country not covered by the Voting Rights Act." (As quoted in Abigail Thernstrom, *A Period Piece*, THE VOLOKH CONSPIRACY (Aug. 20, 2009, 3:15 AM), http://volokh.com/2009/08/20/a-period-piece.) Yet, Section 5 still "presumes that minorities are powerless to protect their own election interests in places where they actually have the most clout." *Id.*

Racial progress has rapidly outpaced the law, and the voting rights challenges of greatest concern today—hanging chads, provisional ballots, electronic voting glitches, and Black Panther intimidation—bear no relation to those that plagued the South in 1965. Nevertheless, the VRA's most radical provisions survive, addressing yesterday's problems.

Seventeen years ago, one of the more liberal members of this Court described blacks and Hispanics as members of normal political interest groups. "Minority voters," Justice David Souter said, "are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics." *Johnson v. DeGrandy*, 512 U.S. 997, 1020 (1994).

America has changed, the South has changed, and it's time for this Court to change constitutional understandings regarding the VRA as well.

5. Escaping the "Serbonian Bog"

At its inception, the VRA stood on firm constitutional ground; it was pure antidiscrimination legislation designed to enforce basic Fifteenth Amendment rights. A clear principle justified its original enactment: skin color should be irrelevant when states determine voting eligibility.

Unfortunately, that clarity has been lost. More than four decades later, the law has become what Judge Bruce Selya has described as a "Serbonian bog." *Uno v. Holyoke*, 72 F.3d 973, 977 (1995). The legal landscape looks solid but is really a quagmire into which "plaintiffs and defendants, pundits and policymakers, judges and justices," have sunk. *Id.*

Indeed, the VRA is arguably an obstacle to greater racial integration. Race-based districts have kept most black legislators from the political mainstream—precisely the opposite of what the law's framers intended. Majority-minority districts reward politicians who make the sort of racial appeals that are the staple of invidious identity politics. Cass Sunstein has identified this mechanism as being part of a larger phenomenon: People across the political spectrum end up with more extreme views than they would otherwise hold when they talk only to those who are similarly-minded. *See generally* Cass Sunstein, REPUBLIC.COM (2001).

Districts drawn to maximize the voting power of a racial group encourage voters to talk only to the similarly minded. Black elected officials are disinclined

to run and unprepared to win races in majority-white constituencies. In safe seats, meanwhile, politicians are under no pressure to run as centrists. Their ideology, along with a reluctance to risk campaigns in unfamiliar settings, perhaps explain why so few members of the Congressional Black Caucus have run for statewide office. As of 2006, all CBC members were more liberal than the average white Democrat, limiting their appeal to white voters, particularly in the South. Abigail Thernstrom, *Looking Forward*, THE VOLOKH CONSPIRACY (Aug. 21, 2009, 3:16 AM), http://volokh.com/2009/08/21/looking-forward.

Non-mainstream actors can play an important role in shaping legislation, of course, but when a historically excluded group subsequently chooses the political periphery, it risks perpetuating its outsider status. The marginalization that the VRA aims to eradicate instead becomes entrenched.

Not all black politicians have been trapped in safe minority districts, of course. Barack Obama, to use a glaring example, lost a congressional race in a majority-black district but went on to win a statewide Senate election. Journalist Gwen Ifill described a number of other such candidates whose political ingenuity transcended racial lines in her recent book, THE BREAKTHROUGH: POLITICS AND RACE IN THE AGE OF OBAMA (2009). For example, in 1999, Mike Coleman became the first black mayor of Columbus, Ohio, using the strategy: "Woo the white voters first . . . then come home to the base later." *Id.* at 227. Nevertheless, such candidates remain the exception. The VRA was meant to level the playing field but has been used to maximize safe black districts. The ugly implication is that black politicians need such help to win.

More broadly, the firm constitutional ground the VRA initially stood upon has disintegrated.

B. The VRA Conflicts with the Constitution[3]

Section 1 of the Fifteenth Amendment provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Section 2 provides: "The Congress shall have power to enforce this article by appropriate legislation." It's hard to fault either provision. Of course nobody should be kept from voting because of skin color and, given the historical context, the national legislature should have the authority to pass laws making that guarantee a reality.

The trouble is that, as we have seen, *supra*, the principal statutes that Congress passed in the Fifteenth Amendment's name go far beyond enforcing that guarantee and, perversely, encourage segregation through racial gerrymandering. The problem's genesis may be in the contrast between the prolixity of the VRA and brevity of the Fifteenth Amendment; compare the quotations in the previous paragraph with Section 2's 200-plus words and Section 5's 650.

What's going on here? One could understand how the constitutional provision "to provide and maintain a Navy" might necessitate an enacting statute of more than a few words, but why does a prohibition on race-based voter discrimination require all this verbiage? There is a different answer for each provision.

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[3] This section is largely based on the work of Roger Clegg, president of the Center for Equal Opportunity and former DOJ official, particularly *The Future of the Voting Rights Act after* Bartlett *and* NAMUDNO, 2008-2009 CATO SUP. CT. REV. 35 (2009).

With regard to Section 2, note that the original 1965 version was much shorter: "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." The longer version was enacted in 1982 to override *Mobile v. Bolden*, 446 U.S. 55 (1980), which held that the original provision was coextensive with the Constitution, prohibiting only racially disparate *treatment*—but not voting practices and procedures a judge or bureaucrat determined had a racially disparate *result*. Put differently, Congress used its Fifteenth Amendment enforcement power to make illegal actions that aren't unconstitutional.

With regard to Section 5, there is a more sympathetic answer. Certain jurisdictions in the South had played a cat-and-mouse game with voting-rights enforcement, so Congress decided to require them to get permission from the DOJ or D.C. court—not the local federal court that the court below is here—before making any electoral changes. Fair enough, but it is problematic that Congress has again outlawed both actions with a racially disparate "purpose" and those with a racially disparate "effect"—so again that which the Constitution permits is illegal under a law supposedly passed to enforce the Constitution.

Whenever the government bans actions (public or private) that merely have racially disparate *impacts*, two bad outcomes are encouraged that would not be if the government only policed actual racial discriminationce. First, actions that are perfectly legitimate are abandoned. Second, if the action is valuable enough,

surreptitious racial quotas will be adopted so that the action no longer produces a racially disparate impact.

In staffing, for example, an employer who has required each of his employees to have a high school diploma, and who does not want to be sued for the racially disparate impact this criterion creates, has two choices: abandon the requirement (and hire employees he believes to be less productive) or keep the requirement but implement racial hiring quotas (thus, perversely, engaging in the very discrimination that the statute supposedly bans). This latter tension—between the anti-racism mandate of prohibiting disparate treatment and the race-conscious mandate of prohibiting disparate impact—was at the forefront of another civil rights case that this Court decided three terms ago. *See* Kenneth L. Marcus, *The War Between Disparate Impact and Equal Protection*, 2008-2009 CATO SUP. CT. REV. 53 (2009). Justice Scalia's concurrence there noted that, indeed, the tension is so strong that disparate impact statutes may violate the Constitution's equal protection guarantee. *Ricci v. DeStefano*, 129 S. Ct. 2658, 2682 (2009).

We see the same phenomenon in the VRA context. Some legitimate voting practices—*e.g.*, making sure that voters can identify themselves as U.S. citizens—will be challenged if they have a racially disparate impact. More relevant to this case, jurisdictions will be pressed to use racial gerrymandering—racially segregated districting—to ensure proportionate election results and thus engage in the very discrimination that is at odds with the underlying law's ideals!

To emphasize: *The principal use of Sections 2 and 5 today is to coerce state and local jurisdictions into*

drawing districts with an eye on race, to ensure that minorities will elect representatives of the right color.

The VRA quite literally denies the equal protection of the laws by providing legal guarantees to some racial groups that it denies others. A minority group may be entitled to a racially gerrymandered district—or be protected against racial gerrymandering that favors others—while other groups are not so entitled and indeed may lack protection against districting that hurts them. *This is nothing if not treating people differently based on race.* Under the Constitution, no racial group should be assured "safe" districts or districts where it has "influence" unless all other groups are given the same guarantee—a guarantee that is impossible to give even if it were a good idea.

The racial balkinization Sections 2 and 5 foster is so pernicious that this Court has repeatedly warned about its unconstitutionality. *See, e.g.*, *NAMUDNO*, 129 S. Ct. 2504; *Bartlett v. Strickland*, 556 U.S. 1 (2009); *Branch*, 538 U.S. 254; *Abrams*, 521 U.S. 74. The segregated districts that racial gerrymandering creates have led to uncompetitive elections, increased polarization (racial and ideological), and the insulation of Republican candidates and incumbents from minority voters—as well as the insulation of minority candidates and incumbents from white voters (contributing to these politicians' difficulties in running for statewide office). As Chief Justice Roberts wrote, it is, indeed, "a sordid business, this divvying us up by race." *LULAC v. Perry*, 548 U.S. 399, 511 (2006).

II. SECTIONS 2 AND 5 ARE AT A "BLOODY CROSSROADS" THAT CREATES BAD LAW

The VRA's outdated provisions no longer advance the Fifteenth Amendment's simple bar on race-based disenfranchisement. *See NAMUDNO*, 129 S. Ct. at 2516. Worse yet, racial equality is hindered by the complex judicial web surrounding VRA implementation. Courts face significant challenges in trying to avoid racial discrimination while administering the inherently race-conscious VRA—particularly in states like Texas that are subject not only to Section 2's demands but also Section 5's onerous requirements.

The tension between Sections 2 and 5 is perhaps the biggest problem with the VRA that this case brings to the fore. Regardless of one's political ideology or partisan affinities, one can sympathize with the dilemma the San Antonio court faced. That is, the court confronted a "bloody crossroads" at the intersection of Sections 2 and 5. While we know from *Reno v. Bossier Parish School Bd.*, 520 U.S. 471 (1997), that each section requires a distinct inquiry, the court below faced Section 2 claims while also having to draw maps that, because they came from a Section 5 jurisdiction, at least facially had to comply with Section 5. While neither DOJ nor the D.C. court is supposed to deny Section 5 preclearance on Section 2 grounds, *Georgia v. Ashcroft*, 539 U.S. at 478, the San Antonio court was effectively forced to wear both hats. Its apparent inability to do so—at least four members of this Court saw a need for review—is not surprising given the lack of applicable standards.

The San Antonio court is one of many that have labored to satisfy the VRA in the context of a cacophony of precedent—some that invokes only Section 5,

some that invokes only Section 2, and some that invokes both sections. What's more, certain elements of the Section 2 and Section 5 inquiries overlap, but this and other courts have consistently maintained that—at least in some measure—they are distinct. *See, e.g.*, *Bartlett v. Strickland*, 556 U.S. 1; *Georgia v. Ashcroft*, 539 U.S. 461; *Metts v. Murphy*, 347 F.3d 346 (1st Cir. 2003); *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, (D.S.C., 2002).

In evaluating a map under Section 5, a court conducts a "retrogression" analysis to ensure the proposed map does not reduce the ability of minorities to elect their preferred candidates. 42 U.S.C. § 1973c (2006); *Beer v. United States*, 425 U.S. 130 (1976). There is no standardized, justiciable definition, however, of what constitutes the "ability to elect."

Ignoring for the moment the "ability to elect" ambiguity, if a court concludes that retrogression would result under a proposed map, "court-ordered reapportionment plans are subject in some respects to stricter standards than are plans developed by a state legislature. This stricter standard applies, however, only to remedies required by the nature and scope of the violation." *Upham*, 456 U.S. at 42 (internal citations omitted). Okay, but in what respects these standards are "stricter," what constitutes "remedies," and which remedies are "required" (and under what circumstances) is far from clear.

If that weren't cryptic enough, Congress's 2006 prohibition on plans promulgated with "any discriminatory purpose," regardless of effect, further muddies the waters. Without legislative guidance as to what constitutes a "discriminatory purpose," lower courts like the one here are left only to "hope that . . . the

Supreme Court will provide appropriate and immediate guidance." Interim House Order (Doc. 528) at 29 (Smith, J., dissenting), *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. Nov. 23, 2011).

But even if this Court's Section 5 guidance were easily applicable in a given case, that does not end the dispute. After a map has been precleared by the DOJ or approved by a court of relevant jurisdiction, Section 2 further complicates matters. Its language sounds similar to Section 5's—it invalidates laws that create inequality among races in electing their preferred representatives, 42 U.S.C. § 1973(b)—but don't be fooled, say the courts. This Court has "consistently understood" Section 2 to "combat different evils and, accordingly, to impose very different duties upon the States." *Georgia v. Ashcroft*, 539 U.S. at 477-78 (citing *Reno* v. *Bossier Parish*, 520 U.S. at 477). *See also Holder v. Hall*, 512 U.S. 874, 883 (1994) (noting that, while some parts of the § 2 analysis may overlap with the § 5 inquiry, the two sections "differ in structure, purpose, and application.") The distinction *Bossier Parish* draws, however, is merely that Section 5 "by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan." *Id.* at 478. Is that a meaningful difference?

Indeed, even if it is relatively clear that courts intend the analysis under the two sections to be different; how those analyses should differ remains ambiguous. "In contrast to Section 5's retrogression standard, the 'essence' of a Section 2 vote dilution claim is that 'a certain electoral law, practice, or structure...cause[s] an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.'" *Georgia v. Ashcroft*, 539 U.S.

at 478 (citing *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). This Section 2 process seems hardly different, however, from the very "retrogression" standard it distinguishes—a judicial assurance that a map "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (2006).

The result is untenable: Some states and counties are subject to Section 5's prolonged preclearance process—requiring them to maintain certain minority-majority districts under complex standards—while there has not yet been any judicial, legislative, or otherwise meaningful articulation of any *substantive* difference between that selectively applied Section 5 analysis and the Section 2 review all states must satisfy. Further, Section 5 is no longer justified by "the proven existence of intentional discrimination so extensive that elimination of it through case-by-case enforcement would be impossible." *NAMUDNO*, 129 S. Ct. at 2524 (Thomas, J., dissenting).

This confusing precedent leaves little hope for the evenhanded administration of justice across the nation—and the turmoil is needless. Indeed, Sections 2 and 5 stem from the same constitutional provision, the Fifteenth Amendment. Section 2 meant to ensure that the Amendment was enforced nationwide, while Section 5 kept a closer eye on states that were most apt to violate it in the 1960s. But the contradictory precedent that has emerged creates a near-impossible task for courts administering the VRA. The lack of clarity regarding the interplay of Sections 2 and 5 also means that constitutionally permitted districting is prohibited (in some states) by a statute passed to enforce the same constitutional guarantees.

CONCLUSION

The Voting Rights Act has served its purpose but is now outmoded and unworkable. Section 2 requires race-based districting, even as Section 5, along with the Fourteenth and Fifteenth Amendments, seem to prohibit it. For its part, Section 5 arbitrarily prevents common national redistricting standards.

Moreover, these tensions cannot but produce chaotic proceedings like those here, which seem to be replicated every redistricting cycle. This state of affairs only serves to frustrate state legislatures, the judicial branch, and the voting public.

Accordingly, *amicus* respectfully suggests that the Court schedule this case for reargument on the serious issues raised regarding the constitutional viability of the VRA as presently conceived. At the very least, any remand should provide guidance beyond even Appellants' detailed fallback position. Such instructions should specify how states can simultaneously satisfy Section 2, Section 5, and the Constitution, and the standards courts are to use when evaluating such attempts or drawing maps themselves.

Respectfully submitted,

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AMICUS CURIAE BRIEF

Nos. 11-713, 11-714, 11-715

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IN THE

Supreme Court of the United States

RICK PERRY, *et al.*,

Appellants,

v.

SHANNON PEREZ, *et al.*,

Appellees.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BRIEF *AMICUS CURIAE* OF EDWARD CHEN AND THE PROJECT ON FAIR REPRESENTATION IN SUPPORT OF APPELLANTS

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Scot A. Reader, One Person, One Vote Revisited: Choosing a Population Basis to Form Political Districts, 17 Harv. J.L. & Pub. Pol'y 521 (1994) 21

INTEREST OF *AMICUS CURIAE*[1]

Edward Chen is a resident of the City of Houston located in Harris County, Texas, and is a citizen of the United States and the State of Texas. He is a registered voter residing within the geographic boundaries of Texas House District 147 under Plan H302 (the court-ordered plan) and District 134 under Plan H283 (the State's plan). Mr. Chen also resides in Texas Senate District 17 under Plan S164 (the court-ordered plan) and Plan S148 (the State's plan). With respect to both, Mr. Chen's legislative district contains a greater number of citizens of voting age than it would if the districts had been apportioned using citizen voting age population. Mr. Chen regularly votes in Texas House and Senate elections, and plans to do so in the future. He also was the lead plaintiff in *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000), *cert. denied*, 532 U.S. 1046, 121 S. Ct. 2020 (2001), which presented the question whether total population or citizen voting age population should be used to determine whether voting districts are equally populated for purposes of compliance with the Fourteenth Amendment's one-person, one-vote requirement.

The Project on Fair Representation ("the Project") is a public interest organization dedicated to the promotion of equal opportunity and racial harmony. The Project works to advance race-neutral principles in the areas of

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1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amicus curiae, or its counsel, made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

education, public contracting, public employment, and voting. It previously has submitted briefs *amicus curiae* in voting rights litigation in cases before this Court, including in *Riley v. Kennedy*, 533 U.S. 406 (2008) and *Northwest Austin Municipal Utility District No. One v. Holder*, 557 U.S. 193 (2009).

Mr. Chen and the Project have a direct interest in this case. Where a redistricting plan creates districts with widely varying numbers of voters, it dilutes the weight of votes cast in overpopulated districts. Under all of the proposed Texas House plans, Mr. Chen's district contains approximately twice as many citizens of voting age as the district with the lowest citizen voting age population, substantially diluting the weight of his vote. The Senate plans likewise dilute the weight of Mr. Chen's vote in violation of the Fourteenth Amendment's one-person, one-vote principle. This runs contrary to the American ideal of individual equality to which the Project is profoundly committed. For these reasons, Mr. Chen and the Project respectfully submit this brief and urge the Court to vacate the orders adopting interim redistricting plans for the Texas House and Senate.

INTRODUCTION

Although there is agreement about little else, the district court, including Judge Smith in dissent, and the parties all acknowledge that any court-imposed interim redistricting plan must comply with statutory and constitutional law. The district court concluded that it had an obligation to independently draw the maps under review here, in large measure, to assure compliance with the Voting Rights Act ("VRA") and the Fourteenth

Amendment. App. 101-104, 114, 115-120; *id.* 185-86, 190-91, 202-203 (Smith, J., dissenting). The Appellees agree. Brief for Appellees the Texas State Conference NAACP Branches, et. al. ("Texas NAACP") 8, 13; Brief for Appellees Texas Latino Redistricting Task Force, et. al. ("TLRTF") 29-30, 34, 35, 47; Brief for Appellees League of United Latin Citizens, et. al. ("LULAC") 32-33. The State of Texas ("the State") counters that the district court was instead obligated to use its legislatively enacted maps as the "interim" redistricting plan "while preclearance is pending, unless the court makes a finding that some aspect of that plan is likely to violate the VRA or the Constitution." Brief for Appellants ("Appellants") 30. Thus, whether *any* of the proposed redistricting maps comply with the Fourteenth Amendment is central to this appeal.

Yet neither the district court nor the parties have alerted the Court to an important question regarding the constitutionality of the Texas House and Senate interim maps: whether they violate the Fourteenth Amendment's one-person, one-vote principle by using total population instead of citizen voting age population ("CVAP") to equalize voting districts. The Court previously declined to resolve this issue, *Chen v. City of Houston*, 532 U.S. 1046, 121 S. Ct. 2020 (2001), but cannot avoid it here given the posture of this case. Under governing precedent, the Court has a legal duty to ensure that a court-imposed redistricting plan fully complies with the Fourteenth Amendment. *Connor v. Finch*, 431 U.S. 407, 421 n.19 (1977). Thus, it is irrelevant that this issue was not addressed below or raised by the parties. The Court's interim plan presumably will be used for the 2012 election cycle. It is the Court's duty, therefore, to make certain

the Texas House and Senate maps that it imposes are constitutional in every respect.

The Court should hold that the one-person, one-vote principle requires voting districts to be equalized based on CVAP—not total population. The premise of the one-person, one-vote principle is that "'[o]nce a geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote .... The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equally among those who meet the basic qualifications.'" *Reynolds v. Sims*, 377 U.S. 533, 557-58 (1964) (quoting *Gray v. Sanders*, 372 U.S. 368, 379-80 (1963)). The fundamental right to an equal vote is destroyed when districts are drawn to dilute or debase the votes of certain electors. As this Court has explained, "it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable." *Id.* at 562. "Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable." *Id.* at 563.

Hence, CVAP—not total population—must be the chief means of equalizing districts. The two categories will coincide in many cases. But when certain voting districts have a high concentration of persons ineligible to vote, using total population dilutes the votes of electors in other districts. This case illustrates the dilutive effect of using total population as the basis for apportionment. The Texas House and Senate maps—under each of the

plans at issue here—exhibit unjustifiably wide disparities in CVAP—and thus "[w]eight[] the votes of citizens differently." *Id.* Under the district court's Texas House map, there is 74.89% CVAP deviation between the largest and smallest districts. The plans offered by Judge Smith and the State have a 69.91% and 73.98% CVAP deviation respectively. The CVAP deviations are similarly large with respect to each of the proposed Texas Senate plans. While exact population equality is not required, such massive deviations are *per se* unconstitutional for both court-imposed and legislatively enacted redistricting maps. *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975); *Brown v. Thomson*, 462 U.S. 835 (1983).

Addressing this issue will have the ancillary benefit of resolving a circuit split in which all three of the lower court cases were incorrectly decided. The Ninth Circuit, over Judge Kozinski's dissent, held that using total population was constitutionally mandated because using CVAP statistics would overpopulate districts with high concentrations of non-voters in violation of the right to petition under the First Amendment and the right of "access" to elected representatives under the Fourteenth Amendment. *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1991). As Judge Kozinski persuasively explained, that conclusion finds no support in this Court's decisions or in the theoretical roots of the one-person, one-vote principle. Under *Reynolds*, the Equal Protection Clause protects against vote dilution—not diluted access to an elected representative.

The Fourth and Fifth Circuits wisely rejected the *Garza* majority's rationale, but likewise declined to adopt Judge Kozinski's view. Instead, these courts held that the

choice between total population and CVAP is committed to the political process and is thus judicially unreviewable. *Daly v. Hunt*, 93 F.3d 1212 (4th Cir. 1996); *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000). Because this is a court-drawn map, there is no "political process" to which this Court could defer. Further, while declining to attribute constitutional significance to the choice between total population and eligible voters may sound appealing, it flatly conflicts with *Baker v. Carr*, 369 U.S. 186, 193-94 (1962), and the many cases resolving one-person, one-vote challenges since then. In *Baker*, the Court made clear that vote dilution challenges to legislative apportionment schemes are subject to judicial review notwithstanding the inherently political nature of the redistricting process. *Id.* Having "crossed the Rubicon," *Branch v. Smith*, 538 U.S. 254, 278 (2003), there is no warrant for retreating to the political-question doctrine when subsidiary issues need to be resolved. So long as the Court retains the one-person, one-vote principle, it has "an obligation to explain to States and localities what it actually means." *Chen*, 532 U.S. 1046, 121 S. Ct. at 2021 (Thomas, J., dissenting from the denial of certiorari).

ARGUMENT

I. THE COURT CANNOT AFFIRM THE INTERIM PLAN WITHOUT DECIDING WHETHER IT COMPLIES WITH THE ONE-PERSON, ONE-VOTE PRINCIPLE OF THE FOURTEENTH AMENDMENT.

Court-ordered state and local redistricting plans, like democratically-chosen plans, must comply with the Fourteenth Amendment. *Abrams v. Johnson*, 521 U.S. 74, 98 (1997); *Chapman*, 420 U.S. at 26-27; *Connor*, 431 U.S. at 414; *Smith v. Cobb County Bd. of Elections and Registrations*, 314 F. Supp. 2d 1274, 1302-1303 (N.D. Ga. 2002). In particular, court-drawn plans must "ordinarily achieve the goal of population equality with little more than *de minimis* variation." *Chapman*, 420 U.S. at 26-27; *Abrams*, 521 U.S. at 98; *McDaniel v. Sanchez*, 452 U.S. 130, 139 (1981). The parties to this appeal do not disagree. Appellants' 61-62; TLRTF 35, 47; LULAC 32-33; Texas NAACP 8, 13. Nor did the district court, App. 115-116, or Judge Smith in dissent, *id.* 190-91, 202-203.

It therefore is immaterial whether a particular Fourteenth Amendment question was addressed below or whether the parties dispute it. Under no circumstance can this Court allow an unconstitutional redistricting plan to be implemented merely because it was drawn by a court or because neither party has a stake in having the map's constitutional defect corrected. In this setting, the Court "has the authority and the duty ... to notice federal-court errors to which no exception has been taken" because failing to do so would "seriously affect the fairness, integrity or public reputation of judicial

proceedings." *Connor*, 431 U.S. at 421 n.19 (citation and quotation omitted). If a court has the legal authority to draw legislative districts for state and local elections, it has the independent obligation to ensure that its maps comply with the Constitution.

Simply put, this Court cannot affirm the interim Texas House and Senate maps without first deciding the important question addressed herein: whether the district court's reliance on "total population" as the basis for equalizing the Texas House and Senate districts comports with the Fourteenth Amendment's one-person, one-vote principle. As explained below, the answer to this question is clear: using "total population" severely dilutes the votes of millions of Texas voters and thus constitutes a flagrant denial of equal protection under the Fourteenth Amendment.

II. USING TOTAL POPULATION STATISTICS TO REAPPORTION STATE AND LOCAL VOTING DISTRICTS VIOLATES THE ONE-PERSON, ONE-VOTE PRINCIPLE.

A. The Court Has Not Decided How "Population" Should Be Measured For The Purpose of Ensuring Compliance With The One-Person, One-Vote Principle.

With regard to state and local elections, this Court has long held that "the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election[.]" *Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo.*, 397 U.S. 50, 56 (1970). This means

that "when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials." *Id.* As a result, "the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Reynolds*, 377 U.S. at 568; *Connor*, 431 U.S. at 416. Although the Equal Protection Clause does not require absolute population equality, *Brown*, 462 U.S. at 842, it forbids "substantial variation" from this constitutional norm, *Avery v. Midland County*, 390 U.S. 474, 485 (1968).

While it has long been clear that state and local districts must be of roughly equal "population," the Court has not decided how "population" should be measured. *Chen*, 532 U.S. 1046, 121 S. Ct. at 2021 (Thomas, J., dissenting from denial of certiorari) ("We have never determined the relevant 'population' that States and localities must equally distribute among their districts."). This is likely because the Court has never been squarely presented with a case in which the distribution of voting-age citizens among voting districts made a difference to the outcome of the case. *See, e.g., Gaffney v. Cummings*, 412 U.S. 735, 746-47 (1973) (noting that the use of total population may not equalize the number of voters, but nevertheless upholding a redistricting plan that used total population because voting age population deviations were only 4%); *Connor*, 431 U.S. at 416 n.13 ("The census is itself at best an approximate estimate of a State's population at a frozen moment in time" and determining the proper population for a district is "complicated ... by the fact that proportionally more Negroes than whites are ineligible

to vote because of age," but finding that it did not need to decide the proper metric because the deviations were unconstitutionally large under any approach).

The fact that this important constitutional issue remains unresolved, however, has not escaped the Court's attention:

> [T]he Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured. Although total population figures were in fact the basis of comparison in [*Reynolds*] and most of the [other cases] decided that day, our discussion carefully left open the question what population was being referred to. At several points, we discussed substantial equivalence in terms of voter population or citizen population, making no distinction between the acceptability of such a test and a test based on total population.... Neither in *Reynolds v. Sims* nor in any other decision has this Court suggested that the States are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured.

Burns v. Richardson, 384 U.S. 73, 91-92 (1966).

Unlike previous cases, how "population" is defined matters here to millions of Texas voters. *Infra* at 26-31. As a consequence, this important question must be resolved before any Texas House and Senate interim redistricting plan is implemented for the 2012 election cycle.[2]

B. CVAP Is The Proper Basis For Determining Whether Legislative Districts Are Equally Populated For Purposes Of The One-Person, One-Vote Requirement.

1. The One-Person, One-Vote Principle Of The Fourteenth Amendment Secures The Rights Of Eligible Voters.

The District Court incorrectly assumed that total population was the proper basis for equalizing the Texas House and Senate voting districts. App. 115-116.[3] But not

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2. Amici's one-person, one-vote challenge is limited to the Texas House and Senate because Section 2 of the Fourteenth Amendment appears to require the apportionment of congressional districts on a total population basis. *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964). But that does not answer whether total population or eligible voter population is the proper metric for state and local elections under the Equal Protection Clause of the Fourteenth Amendment. *Reynolds*, 377 U.S. at 573 (finding the "federal analogy inappropriate and irrelevant to state legislative redistricting schemes").

3. The Texas Constitution requires the use of total population as determined by the United States Census in redistricting the Texas House. Texas Const. art III, § 26. There is no parallel requirement for redistricting the Texas Senate (although, prior to 2001, it required apportionment based on the number of "qualified electors"). Texas Const. art III, § 25. It is clear, however, that

all residents of a given district are eligible to vote. The Fourteenth Amendment protects "the right of all qualified citizens to vote." *Reynolds*, 377 U.S. at 554. Because that right "guarantees the opportunity for equal participation by all voters in the election of state legislators," *id.* at 566, "the weight of a citizen's vote cannot be made to depend on where he lives," *id.* at 567; *id.* at 568 ("[A]n individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."); *id.* at 561 ("[T]he judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote."); *id.* at 563 ("Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable."). The point of *Reynolds* and its progeny is clear: the Fourteenth Amendment's one-person, one-vote principle secures the rights of voters—not the population writ large. *See, e.g.*, *Hadley*, 397 U.S. at 52, 56; *Chapman*, 420 U.S. at 25; *Bd. of Estimate of City of New York v. Morris*, 489 U.S. 688, 698 (1989).

Importantly, then, the Fourteenth Amendment does not create a freestanding right to equally populated voting districts. "[T]he Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis," *Reynolds*, 377

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any such state-law policy must give way when in conflict with the requirements of the United States Constitution. *Reynolds*, 377 U.S. at 537-38 (striking down Alabama Constitution provisions apportioning one senator to each county on one-person, one-vote grounds).

U.S. at 568, in order to secure the equal-protection rights of voters, *id.* at 579 ("[T]he overriding objective must be substantial equality of population among the various districts, *so that* the vote of any citizen is approximately equal in weight to that of any other citizen in the State.") (emphasis added); *Connor*, 431 U.S. at 416 ("The Equal Protection Clause requires that legislative districts be of nearly equal population, *so that* each person's vote may be given equal weight in the election of representatives.") (emphasis added). Population equality is not an end—it is a means of protecting voters from dilution achieved through the redistricting process.

Indeed, protecting qualified voters from vote dilution is the basis for the entirety of the Court's one-person, one-vote line of decisions. In *Baker*, which first found a legislative apportionment claim justiciable under the Equal Protection Clause, the plaintiffs were eligible voters claiming that they had been "denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes." 369 U.S. at 188 (internal quotation omitted). The Court found that the plaintiffs had standing as "voters of the State of Tennessee," *id.* at 204, and that "voters who allege facts showing disadvantage to themselves as individuals have standing to sue," *id.* at 206.

In particular, the Court characterized the plaintiffs' claim as arguing that the State had "effect[ed] a gross disproportion of representation to voting population. The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-à-vis voters in irrationally favored counties."

Id. at 207-208. The vote-dilution claim was justiciable because a "citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution[.]" *Id.* at 208. It thus was the plaintiffs' status as *voters* that afforded them Article III standing and it was their right to an undiluted *vote* under the Equal Protection Clause that made that claim justiciable. Absent those features, there is no reason to believe that the Court would have found a judicially-enforceable right to population equality in the Fourteenth Amendment.

The outcome of *Burns v. Richardson*, 384 U.S. 73 (1966), likewise depends on the understanding that the one-person, one-vote principle protects *voters*. In *Burns*, Oahu contained a large population of military personnel and other transients who were counted in the census, but were not registered to vote in Hawaii. *Id.* at 90-91. Hawaii's redistricting plan assigned 37 of 51 state house seats to Oahu based on voter registration statistics from the 1964 general election. *Id.* at 90. Had redistricting been based on total population, Oahu would have been entitled to 40 seats. *Id.* The plan created deviations between districts of over 100% with respect to total population, but had only minor population deviations in terms of registered voters. *Id.* at 90-91 & n.18. The Court held "that the present apportionment satisfies the Equal Protection Clause," *id.* at 93, and that using total population, in light of the high concentration of military and other transient persons on Oahu, would have been "grossly absurd and disastrous," *id.* at 94 (quotation omitted). *Burns* can only be explained as a rejection of total population as a basis for redistricting because the total population of the Hawaiian districts did not coincide with the number of eligible voters in that state.

At base, reliance on total population as the starting point for reapportionment is plainly unconstitutional when it leads to a grossly unequal distribution of eligible voters. In many cases, the use of total population will sufficiently protect the Fourteenth Amendment rights of voters as "eligible voters will frequently track the total population evenly." *Chen*, 206 F.3d at 525. But where, as here, large numbers of persons ineligible to vote are concentrated in certain geographic locations, *infra* at 26-31, the use of total population cannot adequately protect the voters' right to an equally weighted vote, *Gaffney*, 412 U.S. at 746 ("[I]f it is the weight of a person's vote that matters, total population ... may not accurately reflect that body of voters whose votes must be counted and weighed for the purposes of reapportionment, because 'census persons' are not voters.").

2. Using CVAP Statistics Is The Best Means of Determining Whether Voting Districts Are Equally Populated.

Because the one-person, one-vote principle protects the rights of voters, districts must be drawn based on voter-based statistics—not federal-census total population statistics. The cases that have addressed the issue have identified voter registration statistics, *see, e.g.*, *Burns*, 384 U.S. at 90-91, CVAP, *see, e.g.*, *Chen*, 206 F.3d at 523-24; and voting age population, *see, e.g.*, *Daly*, 93 F.3d at 1222; *Garza*, 918 F.2d at 773, as potential candidates. In reality, each of these metrics may be constitutionally acceptable in a particular case. In the main, however, CVAP is best suited to the task.

First, using CVAP would harmonize the one-person, one-vote inquiry with the test for evaluating vote dilution

claims under Section 2 of the VRA, 42 U.S.C. § 1973. *Thornburg v. Gingles*, 478 U.S. 30 (1986). Under the *Gingles* test, the Court uses CVAP to determine when a constituency possesses electoral power in a particular area. *See, e.g., League of United Latin American Citizens v. Perry*, 548 U.S. 399, 427-28 (2006). Insisting on the use of total population for the one-person, one-vote standard (but using CVAP to evaluate vote dilution claims under Section 2) forces states and localities to choose between statutory compliance and constitutional fidelity when the two are irreconcilable. Indeed, that might be the result here if the Court were to uphold the court-imposed Texas House and Senate plans in this case, which were supposedly drawn to comply with Sections 2 and 5 of the VRA, App. 117-120.[4] The Court has always avoided this type of confrontation if at all possible. *See, e.g., Miller v. Johnson*, 515 U.S. 900, 922-23 (1995); *Ricci v. DeStefano*, 129 S. Ct. 2658, 2674-76 (2009). It should do so here.

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4. Failing to harmonize the constitutional and statutory inquiries also makes the uneven distribution of voters throughout the State subject to manipulation and gamesmanship, as TLRTF's brief illustrates. In one place, TLRTF relies on the decrease in Anglo CVAP and the increase in Hispanic CVAP to argue that more Hispanic districts were needed in a particular area, TLRTF 7-8. Elsewhere, however, its argument is premised on Latino *total population* growth along the Mexican border, *id.* 11-12, and in another place it argues that "Latino voting age population" is the justification for the creation of certain favored districts, *id.* 31-32. And in arguing about Hispanic voting power, TLRTF cites "Spanish-surnamed voter registration" and "Latino registered voters," *id.* at 10-11, 50, rather than CVAP or total population. In the end, of course, TLRTF argues that the court-drawn Texas House and Senate plans in compliance with the Fourteenth Amendment simply because the total population deviation between districts is acceptable. *Id.* at 48. The Court should avoid a legal regime where parties are able to rely on any particular statistic they find useful to make their case.

Second, CVAP is a figure readily available from the census itself (or the American Community Survey in conjunction with the census) and in nearly every instance will accurately track the population of potentially eligible voters. CVAP, by and large, resolves the issues with uneven distribution of the two largest groups who are generally ineligible to vote: (1) persons under 18; and (2) non-citizens. There are a few circumstances where CVAP will not track potentially eligible voters, such as where there are large groups of transients who have not met the jurisdiction's residency requirement, large groups of felons or prison populations ineligible to vote, or where a local jurisdiction has extended the right to vote to non-citizens or persons under 18. But situations in which these groups are unevenly distributed across the CVAP population will be few and far between, and can be addressed by using more specific demographic studies in those particular states and localities.

Third, and last, CVAP is superior to other metrics for tracking voters. As this Court has noted, the use of actual numbers of registered voters or voter turnout is problematic because it susceptible to manipulation and, in any event, can fluctuate from election to election depending on the issues at stake, candidates on the ballot, "or even weather conditions." *Burns*, 384 at 92-93. Simply put, the number of actual or registered voters often falls short of the number of individuals eligible to vote. And use of voting age population alone does not account for citizenship, which, as this case aptly illustrates, is a key indicator of voter eligibility.

In sum, the one-person, one-vote principle exists to protect those eligible to vote from having their vote diluted or debased. That fundamental constitutional right

is clearly violated when state and local voting districts include vastly unequal numbers of eligible voters. The only way to solve the problem is to mandate the use of voter-based statistics in the state and local redistricting process. And as this Court's experience with Section 2 of the VRA demonstrates, CVAP is generally the best tool for measuring eligible voters.

C. The Lower Court Decisions Deciding This Issue Are Flawed And Depend On Legal Theories Inapplicable To Court-Imposed Apportionment Plans.

Although this Court has not considered the issue, several lower courts have addressed it. *Garza*, 918 F.2d 763; *Daly*, 93 F.3d 1212; *Chen*, 206 F.3d 502. Not only are these cases wrongly decided, but they illustrate the danger in leaving the issue unresolved.

In *Garza*, the plaintiffs claimed the apportionment of the Los Angeles County Board of Supervisors violated Section 2 of the VRA by splintering the county's Hispanic population. 918 F.2d at 765. Siding with the plaintiffs, the district court "remedied" the problem by imposing on the County a new map that created districts with virtually equal total population, but a 39.92% deviation in CVAP. *Id.* at 773 nn.4-5. The County argued that, under *Reynolds*, CVAP—not total population—must be used to evaluate population equality because "many Hispanics in the County are noncitizens" and thus the creation of a majority-Hispanic district "unconstitutionally weight[ed] the votes of citizens in that district more heavily than those in other districts." *Id.* at 773.

The Ninth Circuit rejected the County's appeal. In its view, this Court's tacit approval of voter registration data as a satisfactory metric in *Burns* was "permissive" and the Fourteenth Amendment did not "require" state and local governments to consider the distribution of voting population for purposes of ensuring compliance with the one person, one vote principle. *Id.* at 774. According to the Ninth Circuit, because "the government should represent all the people," *Reynolds* "recognized that the people, including those who are ineligible to vote, form the basis for representative government." *Id.* The court thus held that total population was the "appropriate basis for state legislative apportionment." *Id.* Viewing the choice between total population and CVAP as mutually exclusive, the Ninth Circuit concluded that using CVAP to equalize voting districts would result in "serious population inequalities across districts," which, in turn, would result in "[r]esidents of the more populous districts [having] less access to their elected representative" in violation of the Equal Protection Clause. *Id.* at 774-75. The court also concluded that using CVAP would violate the Petition Clause of the First Amendment. *Id.* at 775 ("Interference with individuals' free access to elected representatives impermissibly burdens their right to petition the government.").

Judge Kozinski's dissent thoroughly dismantled the majority opinion. As he explained, the majority not only turned *Reynolds* on its head, but enshrined into law an unsustainable conception of the Fourteenth Amendment where the right of "access" to elected representatives trumps the anti-dilution rights of eligible voters. *Id.* at 781-85 (Kozinski, J., concurring in part and dissenting in part). Ultimately, he found the majority's rationale "hard

to square with what the Supreme Court has said on this issue up to now." *Id.* at 780.

As an initial matter, Judge Kozinski rejected the majority's implicit conclusion that total population and CVAP are mutually exclusive. "In most cases, of course, the distinction between the two formulations makes no substantive difference: Absent significant demographic variations in the proportion of voting age citizens to total population, apportionment by population will assure equality of voting strength and vice versa." *Id.* at 781. He was equally clear, however, that on occasion "the selection of an apportionment base does make a material difference." *Id.* When that happens, both constitutional doctrine and theory suggest that CVAP must prevail. *Id.* at 784-85.

On a doctrinal level, "the name by which the Court has consistently identified this constitutional right—one person one vote—is an important clue that the Court's primary concern is with equalizing the voting power of electors, making sure that each voter gets one vote—not two, five, or ten, or one-half." *Id.* at 782 (internal citation omitted). "References to the personal nature of the right to vote as the bedrock on which the one person one vote principle is founded appear in the case law with monotonous regularity." *Id.* In contrast, the Supreme Court's "various statements in support of the principle of equal representation have been far more conditional." *Id.* at 783. Indeed, Judge Kozinski explained, "a careful reading of the Court's opinions suggests that equalizing total population is viewed not as an end in itself, but as a means of achieving electoral equality." *Id.* If the rule were otherwise, he added, the Court's decision in *Burns* would be inexplicable. *Id.* at 784.

Judge Kozinski thought, however, that "reliance on verbal formulations is not enough; we must try to distill the theory underlying the principle of one person one vote and, on the basis of that theory, select the philosophy embodied in the fourteenth amendment." *Id.* at 781. He found that the "principle of equal representation serves important purposes" by assuring "more or less equal access to elected officials" and by potentially assuring an equal distribution of government benefits. *Id.* Were he free to choose, Judge Kozinski suggested he "might well find this argument persuasive." *Id.* at 785.[5]

But Judge Kozinski concluded that he did not have that option because the theory "at the core of one person one vote is the principle of electoral equality, not that of equality of representation." *Id.* at 782. As he explained, the right to vote "is an important power reserved only to certain members of society; states are not required to bestow it upon aliens, transients, short-term residents, persons convicted of crimes, or those considered too young." *Id.* at 781 (citation omitted). The one-person, one-vote principle "assures that those eligible to vote do not suffer dilution of that important right by having their vote given less weight than that of electors in another location." *Id.* at 782. Hence, the Fourteenth Amendment "protects a right belonging to the individual elector and the key question is whether the votes of some electors are materially undercounted because of the manner in which districts are apportioned." *Id.*

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5. Judge Kozinski was actually far too charitable to the majority's representational "access" theory, which has no constitutional pedigree whatsoever. Scot A. Reader, *One Person, One Vote Revisited: Choosing a Population Basis to Form Political Districts*, 17 Harv. J.L. & Pub. Pol'y 521, 530-42 (1994).

Confronted with a case presenting this same choice between representational equality and electoral equality five years later, the Fourth Circuit chose neither. After thoroughly reviewing the applicable precedent, including the *Garza* majority and dissenting opinions, the Fourth Circuit concluded that there was no authority to "suggest that the principle of electoral equality is superior to the principle of representational equality." *Daly*, 93 F.3d at 1223; *id.* at 1226-27 ("[W]hen all of the aspects of equal representation are considered as a whole, it becomes clear that representational equality is at least as important as electoral equality in a representative democracy."). "Even if electoral equality were the paramount concern of the one person, one vote principle," moreover, the court concluded that resolving the issue "would lead federal courts too far into the '"political thicket."'" *Id.* at 1227 (quoting *Colegrove v. Green*, 328 U.S. 549, 556 (1946) (Frankfurter, J., concurring)). The Fourth Circuit held that "the decision to use an apportionment base other than total population is up to the state." *Id.* at 1225. As North Carolina law specifically dictated that total population be used, the court found that the state had made its choice and thus had not violated the Equal Protection Clause. *Id.* at 1227.

The Fifth Circuit reached the same conclusion. *Chen*, 206 F.3d at 522-28. While chiding this Court for being "somewhat evasive in regard to which population must be equalized," it found that the pertinent decisions "indicated with some clarity that the choice has political overtones that caution against judicial intrusion." *Id.* at 524. The Fifth Circuit thought Judge Kozinski had set forth a "powerful case that the general tenor of the Court's opinions mandates protection of the individual potential voter." *Id.* at 525. And it "read *Burns* as compelling

rejection of the *Garza* majority view that the Equal Protection Clause mandates inclusion of aliens in the population base of electoral districts against which the equality requirements of *Reynolds* are applied." *Id.* at 526. The Fifth Circuit nevertheless found "no justification to depart from the position of *Daly*." *Id.* at 528. Pointing to evidence suggesting that the Fourteenth Amendment's framers "had a meaningful debate on the question, which cannot be said to have been definitively resolved," the Fifth Circuit refused to interpret "the Equal Protection Clause to require the adoption of a particular theory of political equality." *Id.* at 527. Like the Fourth Circuit, the court held that "the choice of population figures is a choice left to the political process." *Id.* at 523.

This political-process approach is no more viable than the "access" theory that currently reigns in the Ninth Circuit. As an initial matter, as court-imposed redistricting plans do not arise from the "political process," the "judicial intrusion" into the "political thicket" the Fourth and Fifth Circuits sought to avoid is inevitable. There is simply no political process to which this Court might defer. Indeed, the district court made clear that it could not defer to the State in drawing the Texas House and Senate maps, *see, e.g.*, App. 90-92, and Appellees have trumpeted this as key justification for the wholesale changes the district court has imposed, *see, e.g.*, LULAC 34-35; Texas NAACP 7, 15-19; TLRTF 35, 44-47. Thus, the reasoning of the Fourth and Fifth Circuit is inapplicable here. The Court—not the State through the politcal process—is choosing the population basis for the interim maps. It must decide whether the *Garza* majority or Judge Kozinski was correct.

But even setting aside the differences between court-imposed and democratically-chosen redistricting plans, the political-process rationale is still unsustainable. This question has been settled for nearly 50 years. As noted above, in *Baker* this Court held that a vote-dilution challenge by Tennessee voters to apportionment was "justiciable, and if discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights." 369 U.S. at 209-210 (citation and internal quotations omitted); *Reynolds*, 377 U.S. at 556 (explaining that *Baker* held that "a claim ...challenging the constitutionality of a State's apportionment of seats in its legislature, on the ground that the right to vote of certain citizens was effectively impaired since debased and diluted, in effect presented a justiciable controversy subject to adjudication by federal courts").

Moreover, *Reynolds* squarely rejected the very reasoning that the Fourth and Fifth Circuits found so appealing in *Daly* and *Chen*:

> We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights

> demands judicial protection; our oath and our office require no less of us.

Id. at 566.

Accordingly, "[a]ny alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Id.* at 562; *Connor*, 431 U.S. at 416 ("The Equal Protection Clause requires that legislative districts be of nearly equal population, so that each person's vote may be given equal weight in the election of representatives. It was recognition of that fundamental tenet that motivated judicial involvement in the first place in what had been called the 'political thicket' of legislative apportionment.") (citations omitted)). This Court long ago determined that the Fourteenth Amendment includes a one-person, one-vote principle requiring States to equalize the population of voting districts, and that the judiciary has an obligation under Article III to enforce that rule notwithstanding the inherently political nature of these issues. Those seminal decisions were subject to substantial challenge at the time. *Baker*, 369 U.S. at 267-330 (Frankfurter, J., dissenting); *Reynolds*, 377 U.S. at 589-625 (Harlan, J., dissenting). If the Court is inclined to overrule them, it should do so forthrightly, not by converting subsidiary issues into unreviewable political questions. *Chen*, 121 S. Ct. at 2021 (Thomas, J., dissenting from the denial of certiorari) ("The one-person, one-vote principle may, in the end, be of little consequence if [the Court] decide[s] that each jurisdiction can choose its own measure of population."). "[A]s long as [the Court] sustain[s] the one-person, one-vote principle, [it has] an obligation to explain to States and localities what it actually means." *Id.*

III. THE INTERIM HOUSE AND SENATE PLANS DO NOT COMPLY WITH THE ONE-PERSON, ONE-VOTE PRINCIPLE IF CVAP IS USED AS THE BASIS FOR REAPPORTIONMENT.

Using CVAP statistics reveals that all the proposed interim Texas House and Senate maps distribute electors across voting districts in a patently unequal way. The result is that the votes of voters in certain districts carry more than twice the weight of those in other districts. No interim map with such a massive disparity can withstand any level of constitutional scrutiny.

Under the court-ordered House map (H302), District 75 has the lowest CVAP with only 56,790 citizens of voting age, while District 134 has a CVAP of 132,415. There are, therefore, 2.33 citizens of voting age in District 134 for every citizen of voting age in District 75; there are 36 districts with a CVAP twice as great as District 75's. District 134 contains 33.44% more citizens of voting age than the ideal district, and there is a 76.21% CVAP deviation between the largest and smallest districts under the plan.

Judge Smith's map (H299) is hardly better. District 75 has a CVAP of 56,790, while District 134 has a CVAP of 127,300, giving District 134 2.24 citizens of voting age for every citizen of voting age in District 75; there are 35 districts with a CVAP twice as great as District 75's. District 134 contains 28.28% more citizens of voting age than the ideal district, and there is a 71.05% CVAP deviation between the largest and smallest districts under the plan. Finally, the State's map (Plan H283) places 130,995 citizens of voting age in District 134 but only

56,380 citizens of voting age in District 31, giving District 134 2.32 citizens of voting age for every one in District 31; there are 38 districts with a CVAP twice as great as District 31's. District 134 contains 32.01% more citizens of voting age than the ideal district, and there is a 75.19% CVAP deviation between the largest and smallest districts under the plan.

The problems with the various Senate maps are similarly pronounced. Under the court-ordered map (S164) and the State's map (S148), District 27 has the lowest CVAP with only 358,205 citizens of voting age, while District 3 has a CVAP of 588,210. There are, therefore, 1.64 citizens of voting age in District 3 for every citizen of voting age in District 27, and District 3 contains 22.43% more citizens of voting age than the ideal district. There is a 47.87% CVAP deviation between the largest and smallest districts under the plans.

These CVAP deviations are clearly unconstitutional. A population deviation between the largest and smallest districts (as a percentage of the ideal district) of 10% or more is *prima facie* evidence of a one-person, one-vote violation that triggers the State's obligation to set forth a compelling justification for the deviation. *Brown*, 462 at 852; *see, e.g.*, *Gaffney*, 412 U.S. at 750-51 (concluding that a 7.83% deviation was permissible); *White v. Regester*, 412 U.S. 755, 763 (1973) (permitting a maximum deviation of 9.9%). But if the population discrepancy is large enough, the plan is *per se* unconstitutional. *Mahan v. Howell*, 410 U.S. 315, 329 (1973) (concluding that a 16.4% discrepancy "may well approach tolerable limits" the Court was willing to accept irrespective of the State's justification).

Of course, that test applies to democratically-chosen redistricting plans. The rules are quite different for court-ordered plans as courts cannot rely on countervailing state policies as justification for population deviations. Only "*de minimis*" deviations are permitted in court-drawn maps. *Chapman*, 420 U.S. at 26-27; *McDaniel*, 452 U.S. at 138-39 ("[T]he Court has tolerated somewhat greater flexibility in the fashioning of legislative remedies for violation of the one-person, one-vote rule than when a federal court prepares its own remedial decree."); *Connor*, 431 U.S. at 419-20 ("[T]he latitude in court-ordered plans for departure from the *Reynolds* standards ... is considerably narrower than that accorded apportionments devised by state legislatures[.]"). In fact, the *Chapman* Court was unwilling to accept that even a 5.95% deviation between the largest and smallest districts would satisfy the *de minimis* deviation standard to which court-ordered maps are held. 420 U.S. at 25-26.[6]

Under any standard, however, there can be no doubt that the Texas House deviation of 76%, in which the votes

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6. The District Court and the parties were keenly aware of this issue. The District Court explained that it was attempting to draw districts with only a *de minimis* population deviation, but nevertheless created interim maps in which even the *total population* deviation were 8.9% for the House and 8.0% for the Senate. Under *Chapman*, it is doubtful that the court-drawn maps comply with the one-person, one-vote principle even using a total population metric. The State, in drawing and enacting the House and Senate plans that are challenged in this litigation, likewise endeavored to stay within the 10% deviation threshold that it considered a safe harbor under this Court's precedents, and it appears to have done so if *total population* is the only relevant metric.

of voters in one district carry twice the weight of voters in another district, or even the 48% deviation of the Senate plans, are *per se* unconstitutional:

> [I]f a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable.

Reynolds, 377 U.S. at 562; *Morris*, 489 U.S. at 698 ("[A] citizen is . . . shortchanged if . . . he may vote for one representative and the voters in another district half the size also elect one representative.").

Yet this is precisely what the district court's maps (and indeed all of the proposed maps) necessarily impose. As noted above, the Court indicated in *Mahan* that a 16.4% deviation approached the constitutional limit, even where the redistricting plan was democratically chosen (unlike

in this case), and assuming that the State might have a compelling interest in drawing districts with such wide deviations. But this case exceeds the deviations found barely tolerable in *Mahan* by an order of magnitude. If the one-person, one-vote principle has any value, such deviations are clearly unconstitutional.

But even if the plan is not unconstitutional *per se*, and even if the District Court were entitled to subjugate population equality to other political goals, there can be no legitimate interest in making the votes of certain citizens worth half the votes of others. The only two policy goals that this Court has identified as possibly justifying deviations slightly larger than 9.9%—preservation of the integrity of political subdivisions and maintenance of compactness and contiguity—are clearly not driving the gross disparities present in this case. *Abate v. Mundt*, 403 U.S. 182, 185 (1971); *Swann v. Adams*, 385 U.S. 440, 444 (1967); *Mahan*, 377 U.S. at 579. Rather, the disparities here are the result of unadorned attempts to do rough justice on total population and declare compliance with the Equal Protection Clause while ignoring the one-person, one-vote rights of the people who will actually be voting in the elections.

This Court has not hesitated to strike down court-drawn apportionment plans as violating the one-person, one-vote principle. In *Chapman*, for example, the Court found a deviation of 20.14% from the smallest district to the largest, and a population ratio of 1.23 to 1.00. 420 U.S. at 21-22. Because the district court failed to offer compelling reasons for these stark variations, this Court found that it would not have survived even under the more relaxed standard applied to legislative plans; hence, there was no way the district court could meet the "higher

standards" that are applied to court-drawn plans. *Id.* at 26. In *Connor*, the Court likewise rejected two court-drawn plans for the reapportionment of the Mississippi legislature, finding that the 18% population deviation violated the "fundamental tenet" that "legislative districts be of nearly equal population, so that each person's vote may be given equal weight in the election of representatives." 431 U.S. at 416; *id.* at 420-21 ("[T]here can be no alternative but to set aside the District Court's decree for its failure to embody the equitable discretion necessary to effectuate the established standards of the Equal Protection Clause.").

The Court should not hesitate in this case either. *Reynolds* and its progeny require population equalization in order to secure the equal-protection rights of the voter. And given Texas's demographics, CVAP is the proper metric for making that determination. Under that standard, there can be no question that the court-imposed Texas House and Senate maps under review here are *per se* unconstitutional.

IV. THE COURT SHOULD VACATE THE DISTRICT COURT'S ORDER AND REMAND THIS CASE FOR FURTHER PROCEEDINGS.

Appellees ask this Court to affirm the District Court on the ground that it "applied the correct legal standards in its crafting of the interim plans." Texas NAACP 32. That is simply impossible. Not only has the State shown that the District Court committed a series of legal errors, but the constitutionality of the interim Texas House and Senate maps depend on the validity of using total population to equalize the voting districts. This Court thus cannot affirm the decision below without deciding

that issue. And, for the many reasons set forth above, total population is not a constitutionally acceptable basis for apportioning state and local voting districts.

The State argues that its Texas House and Senate maps should be the starting point for any interim plan and should be altered only "when necessary to remedy a likely statutory or constitutional violation." Appellants' 27. It also argues that, if the Court remands for further proceedings, it "should clarify that the district court cannot seek to equalize population among state legislative districts unless the population deviations in the legislatively enacted maps violate the law." *Id.* at 32. The State is on strong legal footing with respect to both points. But that does not solve its problem. Amici have identified a "likely ... constitutional violation" establishing that "the population deviations in the legislatively enacted maps violate the law." Accordingly, the Court also cannot select the State's maps as the "interim" plan for the 2012 election cycle if CVAP is the proper basis for equalizing state and local voting districts.

Once the Court embarks on a constitutional inquiry into any of the proposed Texas House and Senate maps before it, then, the only appropriate remedy is to vacate the district court's order and remand the case for further proceedings. Any interim Texas House and Senate map must comply with the Fourteenth Amendment. That said, there is no question that the posture of this case makes the delay occasioned by further proceedings worrisome. Appellants' 54-55. The State suggests that the Court may permit the use of its maps on an emergency basis until preclearance is secured. *Id.* Amici take no position on the legality of such an approach, but note that it is far superior

to affirming the District Court on the ground that there is insufficient time to correct its many errors. If there is indeed no time to redraw an interim Texas House and Senate maps that comply with the one-person, one-vote principle, it is because the District Court abandoned neutral principles of law in drawing maps that satisfied its own peculiar sense of justice and because Appellees nakedly manipulated the Section 5 preclearance process. *Id.* at 10-13, 41-42, 46-48. Remanding the matter so that the Texas House and Senate voting districts can be redrawn using CVAP would be best. But if the Court is forced to choose from one of the maps now before it on an emergency basis, it should not reward those that are chiefly responsible for this mess.

To be clear, however, because the State's maps would be implemented strictly on an "emergency" not "interim" basis, adopting this approach would require the Court to refrain from commenting on the constitutionality of the Texas House and Senate voting districts. It would simply defer resolution of the important constitutional issues at stake here until after preclearance is secured in light of the need to have some plan in place for the 2012 election cycle. Thus, if the Court finds this approach attractive, it must make abundantly clear that its decision is neither an endorsement of the legislatively enacted maps nor prejudicial to Mr. Chen's right to bring a one-person, one-vote challenge based on the use of total population to equalize voting districts once preclearance is secured and statutory and constitutional challenges to the precleared maps ensue.

CONCLUSION

For the reasons set forth herein, the orders entered in the captioned appeals should be vacated, and the matter remanded, to allow the district court to draw new interim Texas House and Senate districts that comply with the Equal Protection Clause.

Respectfully submitted,

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American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH302

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
1	165,823	125,927	120,660 (±2,890)	3.1 (±0.9)	17.8 (±1.3)	0.4 (±1.3)	0.2(±1.2)	76.5 (±0.9)	0.8 (±1.1)	0.3 (±1.2)	0.1 (±1.2)	0.6 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
2	173,869	130,806	119,950 (±2,981)	5.5 (±0.7)	6.9 (±0.9)	0.0 (±1.2)	0.0(±1.2)	86.0 (±1.0)	0.6 (±1.0)	0.2 (±1.1)	0.1 (±1.2)	0.6 (±1.0)	0.0 (±1.2)	0.0 (±1.2)
3	170,974	120,035	104,545 (±2,216)	8.2 (±0.8)	4.8 (±0.7)	0.1 (±0.7)	0.0(±0.8)	83.4 (±0.9)	0.4 (±0.6)	1.9 (±0.7)	0.1 (±0.7)	0.5 (±0.6)	0.3 (±0.7)	0.1 (±0.7)
4	165,345	121,168	107,905 (±2,689)	6.4 (±0.8)	9.0 (±1.0)	0.1 (±1.0)	0.0(±1.0)	82.8 (±0.9)	0.6 (±0.9)	0.4 (±0.9)	0.1 (±1.0)	0.5 (±0.8)	0.1 (±1.0)	0.0 (±1.0)
5	160,061	119,871	107,160 (±3,407)	5.8 (±0.8)	12.0 (±1.9)	0.1 (±1.2)	0.2(±1.2)	80.4 (±3.4)	0.6 (±1.0)	0.3 (±1.1)	0.0 (±1.2)	0.5 (±1.1)	0.0 (±1.2)	0.1 (±1.2)
6	160,200	119,452	102,730 (±2,549)	6.0 (±0.9)	19.9 (±1.3)	0.1 (±1.2)	0.0(±1.2)	72.6 (±1.0)	0.3 (±1.1)	0.5 (±1.1)	0.0 (±1.2)	0.3 (±1.1)	0.2 (±1.2)	0.1 (±1.2)
7	161,039	120,296	107,240 (±3,065)	3.9 (±0.7)	17.3 (±1.2)	0.1 (±1.3)	0.2(±1.3)	76.6 (±1.2)	0.5 (±1.2)	0.7 (±1.2)	0.1 (±1.3)	0.6 (±1.2)	0.0 (±1.3)	0.0 (±1.3)
8	161,098	123,550	113,660 (±3,281)	8.8 (±0.9)	18.0 (±1.5)	0.1 (±1.2)	0.1(±1.2)	71.8 (±2.9)	0.4 (±1.1)	0.4 (±1.2)	0.1 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.0 (±1.2)
9	166,719	125,947	118,475 (±2,997)	2.5 (±1.0)	19.6 (±1.4)	0.1 (±1.2)	0.0(±1.3)	76.7 (±0.8)	0.3 (±1.2)	0.2 (±1.2)	0.0 (±1.3)	0.5 (±1.1)	0.0 (±1.3)	0.0 (±1.3)
10	166,147	119,413	107,620 (±2,428)	12.8 (±1.0)	8.8 (±1.0)	0.1 (±1.1)	0.0(±1.1)	76.6 (±0.8)	0.5 (±1.0)	0.5 (±1.0)	0.1 (±1.1)	0.4 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
11	168,699	128,086	111,890 (±3,219)	5.7 (±0.8)	17.4 (±1.0)	0.1 (±1.2)	0.0(±1.2)	75.3 (±1.2)	0.4 (±1.1)	0.4 (±1.1)	0.0 (±1.2)	0.5 (±1.1)	0.2 (±1.2)	0.0 (±1.2)
12	164,418	124,630	111,875 (±2,779)	7.2 (±1.0)	17.0 (±1.2)	0.1 (±1.2)	0.0(±1.2)	74.5 (±0.9)	0.2 (±1.1)	0.4 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.0 (±1.2)	0.0 (±1.2)
13	166,395	128,361	117,150 (±2,591)	13.4 (±0.9)	12.0 (±1.1)	0.1 (±1.3)	0.0(±1.3)	73.6 (±0.9)	0.2 (±1.3)	0.3 (±1.3)	0.0 (±1.3)	0.3 (±1.2)	0.1 (±1.3)	0.0 (±1.3)
14	162,621	131,036	103,475 (±2,991)	14.1 (±1.0)	10.0 (±1.0)	0.2 (±1.1)	0.1(±1.1)	72.7 (±1.4)	0.3 (±1.0)	1.9 (±0.9)	0.0 (±1.1)	0.4 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
15	166,182	122,026	101,315 (±2,362)	8.1 (±0.8)	4.4 (±0.9)	0.1 (±0.9)	0.0(±0.9)	84.1 (±0.9)	0.3 (±0.8)	1.6 (±0.6)	0.1 (±0.9)	0.8 (±0.7)	0.1 (±0.8)	0.2 (±0.9)
16	165,766	119,264	95,380 (±2,741)	10.9 (±1.1)	5.4 (±1.1)	0.0 (±1.1)	0.0(±1.1)	81.8 (±1.1)	0.3 (±1.0)	0.9 (±1.0)	0.0 (±1.1)	0.4 (±0.9)	0.1 (±1.1)	0.1 (±1.1)
17	165,843	122,575	109,355 (±3,381)	23.1 (±1.4)	9.7 (±1.2)	0.1 (±1.2)	0.0(±1.2)	66.0 (±1.1)	0.3 (±1.1)	0.3 (±1.1)	0.0 (±1.2)	0.4 (±1.0)	0.0 (±1.2)	0.0 (±1.1)
18	169,888	132,877	119,850 (±4,391)	8.1 (±1.0)	18.2 (±1.2)	0.0 (±1.1)	0.0(±1.1)	72.3 (±1.1)	0.4 (±1.0)	0.3 (±1.0)	0.1 (±1.1)	0.5 (±1.0)	0.1 (±1.0)	0.1 (±1.0)
19	171,969	131,682	124,465 (±2,849)	3.7 (±0.8)	12.2 (±1.0)	0.1 (±1.1)	0.1(±1.1)	82.6 (±0.9)	0.5 (±1.0)	0.2 (±1.0)	0.1 (±1.1)	0.6 (±1.0)	0.0 (±1.1)	0.0 (±1.1)
20	163,485	124,125	105,180 (±2,648)	11.4 (±1.1)	3.5 (±0.9)	0.0 (±1.1)	0.0(±1.1)	83.5 (±0.8)	0.5 (±0.9)	0.6 (±1.0)	0.1 (±1.1)	0.4 (±0.9)	0.1 (±1.1)	0.0 (±1.1)
21	167,481	126,815	123,780 (±2,733)	4.8 (±0.8)	8.8 (±1.2)	0.1 (±1.2)	0.0(±1.2)	84.1 (±0.7)	0.5 (±1.1)	1.1 (±1.0)	0.0 (±1.2)	0.5 (±1.1)	0.0 (±1.2)	0.0 (±1.2)
22	166,629	126,390	106,745 (±3,397)	8.2 (±1.0)	50.4 (±2.2)	0.1 (±1.4)	0.1(±1.4)	38.8 (±1.0)	0.2 (±1.4)	1.8 (±1.3)	0.0 (±1.4)	0.2 (±1.4)	0.1 (±1.4)	0.0 (±1.5)
23	163,435	123,531	115,770 (±2,837)	16.6 (±1.1)	20.3 (±1.3)	0.2 (±1.3)	0.0(±1.4)	60.7 (±1.1)	0.4 (±1.2)	1.1 (±1.2)	0.0 (±1.4)	0.4 (±1.2)	0.0 (±1.4)	0.1 (±1.3)
24	162,970	118,696	98,615 (±2,321)	11.3 (±1.0)	7.4 (±1.1)	0.1 (±1.1)	0.0(±1.1)	77.5 (±0.9)	0.4 (±1.0)	2.6 (±0.9)	0.0 (±1.1)	0.5 (±0.9)	0.2 (±1.0)	0.0 (±1.1)
25	174,922	129,637	116,795 (±2,903)	20.8 (±1.1)	12.0 (±1.1)	0.1 (±1.3)	0.0(±1.3)	64.7 (±1.0)	0.6 (±1.2)	1.0 (±1.2)	0.0 (±1.3)	0.6 (±1.2)	0.1 (±1.3)	0.1 (±1.3)
26	163,669	117,096	84,720 (±2,547)	14.5 (±1.3)	15.6 (±1.5)	0.1 (±1.0)	0.0(±1.0)	45.3 (±1.4)	0.2 (±1.0)	23.8 (±1.8)	0.0 (±1.0)	0.2 (±0.9)	0.2 (±0.9)	0.1 (±1.0)
27	163,609	116,001	93,685 (±2,773)	15.2 (±1.4)	43.9 (±1.8)	0.1 (±1.0)	0.3(±1.0)	31.9 (±1.3)	0.4 (±0.9)	7.8 (±1.1)	0.0 (±1.0)	0.2 (±1.0)	0.1 (±1.0)	0.1 (±1.0)
28	163,917	112,336	75,835 (±2,298)	19.9 (±1.6)	11.2 (±1.3)	0.1 (±1.0)	0.0(±1.1)	61.7 (±1.3)	0.3 (±1.0)	6.2 (±1.2)	0.0 (±1.1)	0.3 (±0.9)	0.3 (±0.9)	0.1 (±1.0)
29	174,946	123,575	100,500 (±2,364)	17.4 (±1.3)	10.3 (±1.1)	0.1 (±0.9)	0.1(±0.9)	65.8 (±1.3)	0.1 (±1.0)	5.8 (±0.9)	0.0 (±1.0)	0.3 (±0.9)	0.1 (±0.9)	0.1 (±0.9)
30	163,877	117,603	97,155 (±2,589)	19.4 (±1.4)	12.1 (±1.4)	0.0 (±1.2)	0.0(±1.2)	62.7 (±1.1)	0.2 (±1.1)	5.0 (±1.2)	0.0 (±1.2)	0.2 (±1.1)	0.1 (±1.2)	0.0 (±1.2)
31	162,969	103,520	58,155 (±2,369)	93.1 (±1.2)	0.3 (±1.5)	0.0 (±1.5)	0.0(±1.5)	6.2 (±1.2)	0.1 (±1.5)	0.1 (±1.5)	0.0 (±1.5)	0.2 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
32	168,151	127,641	117,515 (±2,921)	30.7 (±1.3)	4.3 (±1.0)	0.1 (±1.2)	0.0(±1.2)	62.8 (±1.0)	0.1 (±1.1)	1.1 (±1.1)	0.0 (±1.2)	0.7 (±1.0)	0.1 (±1.2)	0.1 (±1.2)
33	167,625	123,640	106,115 (±2,797)	59.5 (±1.6)	3.5 (±1.2)	0.0 (±1.4)	0.0(±1.4)	35.5 (±1.2)	0.2 (±1.4)	0.7 (±1.3)	0.0 (±1.4)	0.5 (±1.3)	0.1 (±1.4)	0.0 (±1.4)
34	167,840	122,659	109,515 (±2,795)	59.3 (±1.6)	4.5 (±1.0)	0.0 (±1.2)	0.0(±1.2)	34.4 (±1.1)	0.3 (±1.1)	1.1 (±1.0)	0.0 (±1.2)	0.2 (±1.1)	0.1 (±1.1)	0.0 (±1.2)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH302

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
35	168,627	109,154	66,830 (±2,321)	78.9 (±1.6)	0.5 (±1.3)	0.0 (±1.4)	0.0(±1.4)	20.0 (±1.4)	0.1 (±1.4)	0.2 (±1.3)	0.0 (±1.4)	0.2 (±1.4)	0.0 (±1.4)	0.0 (±1.4)
36	168,963	110,963	63,135 (±2,263)	86.0 (±1.4)	0.4 (±1.5)	0.0 (±1.6)	0.0(±1.6)	12.7 (±1.2)	0.3 (±1.6)	0.5 (±1.5)	0.0 (±1.6)	0.0 (±1.6)	0.0 (±1.6)	0.0 (±1.6)
37	169,088	113,454	74,465 (±2,215)	81.5 (±1.4)	0.2 (±1.8)	0.1 (±1.8)	0.1(±1.8)	17.5 (±1.4)	0.2 (±1.8)	0.1 (±1.8)	0.1 (±1.8)	0.1 (±1.8)	0.0 (±1.8)	0.0 (±1.8)
38	168,214	110,865	79,695 (±2,367)	80.2 (±1.4)	0.3 (±1.4)	0.0 (±1.4)	0.2(±1.4)	18.2 (±1.3)	0.3 (±1.4)	0.8 (±1.3)	0.0 (±1.4)	0.1 (±1.4)	0.0 (±1.4)	0.0 (±1.4)
39	168,659	110,751	70,595 (±2,484)	78.9 (±1.8)	0.3 (±1.6)	0.0 (±1.5)	0.1(±1.5)	20.0 (±1.3)	0.3 (±1.5)	0.4 (±1.4)	0.0 (±1.5)	0.0 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
40	168,662	108,086	70,095 (±2,602)	88.4 (±1.4)	1.4 (±1.2)	0.1 (±1.2)	0.0(±1.3)	9.2 (±1.1)	0.0 (±1.2)	0.5 (±1.1)	0.0 (±1.3)	0.3 (±1.2)	0.0 (±1.2)	0.1 (±1.2)
41	168,776	115,033	84,005 (±2,727)	75.7 (±1.8)	0.9 (±1.1)	0.1 (±1.2)	0.0(±1.2)	21.8 (±1.1)	0.1 (±1.2)	1.1 (±1.0)	0.0 (±1.2)	0.1 (±1.2)	0.1 (±1.2)	0.0 (±1.2)
42	162,321	108,129	77,740 (±2,238)	91.4 (±0.9)	0.4 (±1.4)	0.0 (±1.5)	0.0(±1.5)	7.6 (±1.1)	0.1 (±1.4)	0.4 (±1.4)	0.0 (±1.5)	0.1 (±1.4)	0.0 (±1.5)	0.0 (±1.5)
43	171,411	124,591	117,430 (±3,246)	62.3 (±1.4)	2.1 (±1.2)	0.0 (±1.2)	0.0(±1.3)	34.7 (±1.1)	0.3 (±1.2)	0.3 (±1.2)	0.0 (±1.3)	0.3 (±1.1)	0.0 (±1.2)	0.0 (±1.2)
44	174,451	126,713	105,630 (±2,380)	29.7 (±1.5)	4.8 (±0.8)	0.1 (±1.0)	0.0(±1.0)	63.2 (±1.1)	0.4 (±0.9)	1.0 (±0.9)	0.1 (±1.0)	0.3 (±0.9)	0.2 (±1.0)	0.1 (±1.0)
45	167,604	126,549	109,060 (±3,158)	25.5 (±1.5)	4.1 (±0.9)	0.0 (±0.9)	0.0(±0.9)	68.4 (±1.1)	0.5 (±0.8)	1.0 (±0.8)	0.0 (±1.0)	0.3 (±0.8)	0.1 (±0.9)	0.0 (±0.9)
46	170,822	122,549	83,425 (±2,615)	23.9 (±1.7)	28.7 (±1.7)	0.3 (±1.2)	0.2(±1.3)	41.9 (±1.5)	0.6 (±1.3)	3.7 (±1.2)	0.0 (±1.3)	0.5 (±1.2)	0.2 (±1.3)	0.2 (±1.3)
47	171,116	125,525	109,295 (±2,202)	12.9 (±1.0)	2.0 (±0.6)	0.2 (±0.7)	0.0(±0.8)	79.9 (±0.9)	0.3 (±0.7)	3.4 (±0.5)	0.1 (±0.8)	0.7 (±0.6)	0.4 (±0.6)	0.0 (±0.8)
48	170,732	132,767	116,325 (±2,222)	17.0 (±1.0)	2.3 (±0.9)	0.1 (±1.1)	0.0(±1.1)	76.9 (±0.9)	0.3 (±1.0)	2.7 (±0.8)	0.0 (±1.1)	0.2 (±1.0)	0.3 (±1.0)	0.1 (±1.0)
49	170,321	145,071	118,095 (±3,893)	14.9 (±1.1)	4.6 (±1.1)	0.2 (±1.2)	0.0(±1.3)	75.1 (±0.7)	0.2 (±1.2)	3.7 (±0.9)	0.0 (±1.3)	0.6 (±1.2)	0.6 (±1.1)	0.1 (±1.2)
50	170,943	128,740	107,965 (±2,966)	17.1 (±1.2)	9.8 (±1.0)	0.2 (±0.9)	0.0(±0.9)	65.5 (±1.1)	0.2 (±0.9)	6.0 (±0.8)	0.0 (±1.0)	0.5 (±0.8)	0.4 (±0.9)	0.2 (±0.9)
51	170,332	124,577	83,165 (±2,597)	44.1 (±1.8)	12.5 (±1.3)	0.1 (±1.4)	0.0(±1.4)	40.2 (±1.5)	0.2 (±1.3)	1.9 (±1.2)	0.1 (±1.4)	0.6 (±1.3)	0.3 (±1.3)	0.0 (±1.4)
52	163,674	112,729	93,765 (±2,489)	18.5 (±1.4)	9.6 (±1.1)	0.1 (±0.9)	0.1(±0.9)	68.0 (±1.4)	0.3 (±0.9)	2.5 (±0.8)	0.0 (±0.9)	0.3 (±0.8)	0.3 (±0.8)	0.2 (±0.9)
53	162,897	127,381	115,000 (±2,758)	23.1 (±1.2)	1.1 (±1.1)	0.1 (±1.2)	0.0(±1.2)	74.2 (±1.0)	0.5 (±1.1)	0.3 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
54	165,145	115,049	96,230 (±2,671)	17.8 (±1.3)	28.8 (±1.6)	0.8 (±1.0)	0.1(±1.1)	46.3 (±1.3)	0.8 (±1.0)	3.1 (±0.8)	0.6 (±1.1)	0.6 (±1.0)	0.6 (±1.0)	0.6 (±1.0)
55	164,767	121,870	102,895 (±2,849)	13.0 (±1.1)	10.0 (±1.2)	0.1 (±1.2)	0.0(±1.2)	74.4 (±0.6)	0.4 (±1.0)	1.2 (±1.0)	0.2 (±1.2)	0.4 (±1.1)	0.3 (±1.1)	0.1 (±1.2)
56	162,301	121,546	110,125 (±2,739)	14.4 (±1.0)	11.8 (±1.1)	0.1 (±1.2)	0.0(±1.2)	71.1 (±1.1)	0.3 (±1.1)	1.5 (±1.1)	0.0 (±1.2)	0.4 (±1.0)	0.2 (±1.1)	0.1 (±1.2)
57	162,707	121,864	102,950 (±2,587)	9.6 (±0.9)	19.3 (±1.3)	0.1 (±1.3)	0.1(±1.3)	69.5 (±1.1)	0.3 (±1.2)	0.6 (±1.2)	0.0 (±1.3)	0.5 (±1.2)	0.1 (±1.3)	0.1 (±1.3)
58	169,146	123,826	115,500 (±2,749)	8.7 (±0.9)	3.3 (±1.0)	0.1 (±1.1)	0.0(±1.1)	86.0 (±0.9)	0.7 (±1.0)	0.4 (±1.1)	0.2 (±1.1)	0.5 (±0.9)	0.1 (±1.1)	0.0 (±1.1)
59	163,609	122,193	113,535 (±3,171)	11.4 (±0.9)	10.5 (±1.7)	0.3 (±1.2)	0.0(±1.2)	75.2 (±0.7)	0.5 (±1.1)	0.9 (±1.1)	0.1 (±1.2)	0.6 (±1.1)	0.4 (±1.2)	0.1 (±1.2)
60	169,500	130,018	122,050 (±2,568)	12.5 (±0.9)	4.2 (±1.1)	0.1 (±1.3)	0.1(±1.3)	81.7 (±0.7)	0.6 (±1.2)	0.2 (±1.3)	0.0 (±1.3)	0.5 (±1.2)	0.0 (±1.3)	0.1 (±1.3)
61	168,109	127,338	115,010 (±2,870)	5.7 (±0.7)	1.9 (±1.0)	0.1 (±0.9)	0.0(±1.0)	90.6 (±0.7)	0.6 (±0.7)	0.3 (±0.8)	0.0 (±1.0)	0.5 (±0.8)	0.1 (±0.9)	0.1 (±0.9)
62	160,023	122,203	113,650 (±2,711)	4.2 (±0.9)	6.3 (±1.0)	0.1 (±1.3)	0.0(±1.3)	86.9 (±0.7)	1.1 (±1.1)	0.3 (±1.2)	0.0 (±1.3)	0.9 (±1.1)	0.1 (±1.3)	0.0 (±1.3)
63	166,139	115,765	97,100 (±2,348)	8.3 (±1.0)	4.8 (±0.8)	0.1 (±0.8)	0.2(±0.8)	83.2 (±0.9)	0.3 (±0.6)	2.3 (±0.7)	0.0 (±0.8)	0.6 (±0.5)	0.1 (±0.7)	0.1 (±0.7)
64	165,891	126,950	115,860 (±3,766)	9.9 (±0.9)	8.0 (±0.9)	0.2 (±0.8)	0.3(±0.9)	78.1 (±1.2)	0.3 (±0.7)	1.6 (±0.8)	0.0 (±0.9)	1.2 (±0.7)	0.2 (±0.8)	0.1 (±0.9)
65	165,742	124,977	104,363 (±2,714)	9.8 (±1.1)	10.9 (±1.2)	0.2 (±0.9)	0.1(±0.9)	70.6 (±1.3)	0.3 (±0.8)	6.9 (±1.0)	0.1 (±0.9)	0.7 (±0.8)	0.2 (±0.8)	0.2 (±0.9)
66	172,696	131,434	116,110 (±2,429)	5.8 (±0.8)	8.0 (±1.1)	0.1 (±1.0)	0.0(±1.0)	74.9 (±1.0)	0.7 (±0.9)	9.7 (±0.9)	0.1 (±1.0)	0.3 (±1.0)	0.3 (±1.0)	0.1 (±1.0)
67	172,517	126,746	108,605 (±2,289)	8.4 (±0.9)	6.3 (±1.0)	0.1 (±1.1)	0.0(±1.1)	76.2 (±0.9)	0.4 (±1.0)	7.8 (±0.9)	0.1 (±1.1)	0.4 (±1.1)	0.3 (±1.1)	0.1 (±1.1)
68	169,389	127,914	119,190 (±2,456)	6.4 (±0.8)	2.2 (±1.1)	0.1 (±1.2)	0.0(±1.3)	89.4 (±0.5)	0.6 (±1.1)	0.2 (±1.2)	0.1 (±1.2)	0.9 (±1.0)	0.0 (±1.2)	0.0 (±1.3)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH302

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
69	168,035	128,549	119,090 (±2,440)	12.0 (±0.8)	10.5 (±1.1)	0.2 (±1.2)	0.0(±1.3)	74.2 (±0.8)	0.7 (±1.1)	1.4 (±1.1)	0.1 (±1.3)	0.7 (±1.1)	0.1 (±1.3)	0.1 (±1.2)
70	171,950	116,187	89,070 (±2,125)	10.1 (±1.1)	9.4 (±1.1)	0.1 (±0.7)	0.1(±0.8)	75.7 (±1.1)	0.4 (±0.6)	3.3 (±0.8)	0.0 (±0.8)	0.4 (±0.6)	0.3 (±0.7)	0.0 (±0.8)
71	167,617	126,392	117,715 (±2,670)	18.7 (±1.1)	5.9 (±1.0)	0.1 (±1.3)	0.0(±1.3)	73.1 (±0.8)	0.4 (±1.2)	0.9 (±1.2)	0.1 (±1.3)	0.4 (±1.2)	0.2 (±1.3)	0.1 (±1.3)
72	169,381	130,485	113,700 (±2,714)	27.7 (±1.3)	4.3 (±1.1)	0.1 (±1.4)	0.0(±1.4)	65.9 (±0.9)	0.4 (±1.3)	0.6 (±1.3)	0.1 (±1.4)	0.5 (±1.3)	0.2 (±1.4)	0.1 (±1.4)
73	166,719	127,882	115,665 (±2,883)	16.6 (±1.1)	1.2 (±0.8)	0.1 (±0.9)	0.0(±0.9)	80.6 (±1.1)	0.2 (±0.8)	0.4 (±0.8)	0.0 (±0.9)	0.6 (±0.7)	0.1 (±0.9)	0.2 (±0.9)
74	162,357	115,236	86,210 (±2,524)	69.4 (±1.5)	1.5 (±1.5)	0.1 (±1.6)	0.1(±1.6)	27.2 (±1.2)	0.5 (±1.5)	0.5 (±1.5)	0.0 (±1.6)	0.6 (±1.5)	0.1 (±1.6)	0.0 (±1.6)
75	160,080	103,434	56,790 (±1,924)	89.0 (±1.2)	1.3 (±1.3)	0.0 (±1.4)	0.0(±1.4)	8.1 (±1.1)	0.7 (±1.3)	0.6 (±1.3)	0.0 (±1.4)	0.1 (±1.4)	0.1 (±1.4)	0.1 (±1.4)
76	160,095	116,574	90,595 (±2,811)	83.1 (±3.6)	2.6 (±1.4)	0.1 (±1.5)	0.1(±1.5)	12.8 (±1.3)	0.2 (±1.5)	0.6 (±1.4)	0.1 (±1.5)	0.3 (±1.5)	0.0 (±1.5)	0.1 (±1.5)
77	160,208	116,123	86,859 (±2,290)	65.5 (±1.5)	4.2 (±1.6)	0.1 (±1.7)	0.0(±1.7)	27.1 (±1.2)	0.4 (±1.6)	1.8 (±1.5)	0.0 (±1.7)	0.4 (±1.6)	0.3 (±1.6)	0.1 (±1.7)
78	160,181	113,117	80,340 (±2,123)	64.0 (±1.7)	3.8 (±0.9)	0.1 (±1.3)	0.0(±1.4)	29.3 (±1.1)	0.6 (±1.3)	1.4 (±1.1)	0.2 (±1.3)	0.3 (±1.3)	0.2 (±1.3)	0.1 (±1.3)
79	160,083	110,586	81,405 (±2,228)	75.9 (±1.4)	3.7 (±1.0)	0.2 (±1.2)	0.0(±1.2)	18.8 (±1.1)	0.3 (±1.2)	0.7 (±1.1)	0.0 (±1.2)	0.2 (±1.2)	0.1 (±1.2)	0.0 (±1.2)
80	164,484	121,505	111,170 (±3,158)	58.6 (±1.6)	5.1 (±1.3)	0.1 (±1.2)	0.0(±1.2)	34.9 (±1.2)	0.2 (±1.2)	0.4 (±1.2)	0.1 (±1.2)	0.4 (±1.2)	0.0 (±1.2)	0.0 (±1.2)
81	169,684	120,535	101,715 (±2,406)	39.0 (±1.5)	3.8 (±1.2)	0.1 (±1.5)	0.2(±1.5)	54.8 (±1.2)	0.3 (±1.4)	0.5 (±1.4)	0.0 (±1.5)	1.1 (±1.2)	0.0 (±1.5)	0.0 (±1.5)
82	163,234	118,623	101,635 (±2,426)	28.6 (±1.4)	6.9 (±1.2)	0.2 (±1.4)	0.0(±1.4)	62.5 (±1.0)	0.5 (±1.4)	0.8 (±1.3)	0.0 (±1.4)	0.5 (±1.3)	0.0 (±1.4)	0.0 (±1.4)
83	167,834	122,712	104,715 (±2,338)	25.9 (±1.2)	4.3 (±1.1)	0.3 (±1.3)	0.0(±1.3)	68.2 (±1.0)	0.3 (±1.2)	0.4 (±1.2)	0.0 (±1.3)	0.4 (±1.2)	0.1 (±1.3)	0.1 (±1.3)
84	167,504	128,526	118,935 (±3,143)	28.0 (±1.3)	8.0 (±1.0)	0.2 (±1.2)	0.1(±1.2)	61.8 (±1.2)	0.3 (±1.2)	0.9 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
85	167,078	120,217	105,565 (±2,554)	28.4 (±1.1)	4.5 (±1.3)	0.1 (±1.5)	0.0(±1.5)	65.1 (±0.5)	0.5 (±1.4)	0.3 (±1.4)	0.1 (±1.5)	0.8 (±1.3)	0.0 (±1.5)	0.0 (±1.5)
86	165,183	121,555	106,320 (±2,394)	16.5 (±1.0)	2.0 (±1.1)	0.1 (±1.3)	0.0(±1.4)	79.2 (±1.0)	0.5 (±1.1)	0.7 (±1.2)	0.1 (±1.3)	0.7 (±1.1)	0.0 (±1.3)	0.0 (±1.4)
87	168,161	120,765	105,930 (±2,488)	22.4 (±1.3)	7.8 (±1.3)	0.2 (±1.4)	0.2(±1.4)	66.4 (±0.9)	0.9 (±1.1)	1.4 (±1.3)	0.0 (±1.4)	0.7 (±1.2)	0.1 (±1.4)	0.0 (±1.4)
88	164,842	112,662	75,815 (±2,193)	8.7 (±1.1)	6.6 (±1.2)	0.2 (±0.8)	0.2(±0.8)	80.2 (±1.2)	0.3 (±0.6)	2.6 (±0.7)	0.1 (±0.9)	0.7 (±0.6)	0.2 (±0.8)	0.2 (±0.8)
89	172,541	118,092	88,495 (±2,259)	8.2 (±0.9)	7.5 (±1.0)	0.1 (±0.9)	0.1(±0.9)	76.1 (±1.1)	0.4 (±0.8)	6.5 (±0.8)	0.1 (±0.9)	0.7 (±0.8)	0.3 (±0.8)	0.1 (±0.9)
90	164,567	112,975	72,680 (±2,400)	45.4 (±1.9)	14.6 (±1.9)	0.0 (±2.2)	0.0(±2.2)	37.9 (±1.6)	0.4 (±2.1)	1.3 (±2.0)	0.0 (±2.2)	0.3 (±2.1)	0.1 (±2.2)	0.0 (±2.2)
91	165,088	122,340	106,325 (±2,163)	12.3 (±1.0)	7.2 (±1.0)	0.0 (±1.1)	0.2(±1.1)	74.8 (±0.9)	0.5 (±1.0)	3.6 (±0.9)	0.2 (±1.1)	0.8 (±1.0)	0.2 (±1.1)	0.1 (±1.1)
92	164,800	128,064	114,700 (±2,756)	9.2 (±0.8)	8.0 (±1.0)	0.1 (±1.1)	0.1(±1.1)	77.0 (±1.1)	0.3 (±1.1)	3.6 (±0.9)	0.7 (±1.1)	0.4 (±1.1)	0.4 (±1.0)	0.1 (±1.1)
93	164,126	111,206	76,640 (±2,227)	18.0 (±1.5)	28.8 (±1.8)	0.1 (±1.3)	0.2(±1.2)	44.7 (±1.4)	0.6 (±1.1)	6.6 (±1.1)	0.1 (±1.3)	0.5 (±1.2)	0.2 (±1.2)	0.1 (±1.3)
94	164,463	122,550	105,100 (±2,463)	12.2 (±1.2)	12.4 (±1.2)	0.3 (±1.2)	0.1(±1.2)	68.6 (±1.0)	0.5 (±1.1)	4.8 (±1.0)	0.0 (±1.2)	0.8 (±1.0)	0.2 (±1.2)	0.1 (±1.2)
95	164,467	114,202	87,800 (±2,467)	12.9 (±1.2)	55.2 (±1.6)	0.2 (±1.6)	0.2(±1.6)	29.5 (±1.5)	0.3 (±1.6)	1.3 (±1.5)	0.1 (±1.6)	0.2 (±1.6)	0.0 (±1.6)	0.1 (±1.6)
96	163,924	115,342	91,475 (±2,014)	9.6 (±0.9)	12.6 (±1.1)	0.3 (±0.9)	0.1(±0.9)	73.5 (±1.2)	0.5 (±0.7)	2.4 (±0.8)	0.0 (±0.9)	0.7 (±0.7)	0.2 (±0.9)	0.1 (±0.9)
97	164,518	126,501	114,445 (±2,393)	10.8 (±1.0)	11.7 (±1.1)	0.1 (±1.1)	0.0(±1.1)	74.0 (±0.9)	0.4 (±1.0)	2.2 (±1.0)	0.1 (±1.2)	0.4 (±1.1)	0.1 (±1.1)	0.1 (±1.1)
98	164,082	114,897	103,035 (±2,065)	6.8 (±0.9)	2.7 (±0.8)	0.1 (±0.9)	0.0(±0.9)	86.1 (±0.6)	0.4 (±0.9)	2.9 (±0.7)	0.0 (±0.9)	0.5 (±0.8)	0.3 (±0.9)	0.1 (±0.9)
99	164,791	122,214	103,935 (±2,952)	13.9 (±1.2)	5.9 (±1.2)	0.1 (±1.3)	0.0(±1.3)	77.1 (±1.0)	0.6 (±1.2)	1.6 (±1.1)	0.0 (±1.3)	0.4 (±1.2)	0.3 (±1.2)	0.1 (±1.3)
100	168,904	117,729	86,975 (±2,645)	26.6 (±1.9)	51.9 (±1.6)	0.0 (±1.7)	0.2(±1.7)	19.3 (±1.5)	0.3 (±1.6)	0.5 (±1.6)	0.1 (±1.7)	0.5 (±1.6)	0.1 (±1.7)	0.2 (±1.7)
101	164,208	111,682	83,860 (±2,060)	13.0 (±1.1)	7.3 (±1.1)	0.1 (±0.9)	0.1(±0.9)	74.0 (±1.1)	0.6 (±0.7)	4.3 (±0.9)	0.0 (±0.9)	0.5 (±0.8)	0.3 (±0.8)	0.1 (±0.9)
102	169,171	127,508	103,390 (±2,484)	12.0 (±1.3)	8.8 (±1.2)	0.1 (±1.4)	0.4(±1.4)	70.8 (±0.9)	0.4 (±1.2)	6.5 (±1.1)	0.1 (±1.4)	0.5 (±1.3)	0.2 (±1.4)	0.2 (±1.4)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH302

2010 Census			Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
103	169,261	117,014	64,260 (±2,267)	46.8 (±2.2)	9.6 (±2.0)	0.0 (±2.3)	0.1(±2.3)	39.7 (±1.5)	0.3 (±2.2)	2.6 (±2.0)	0.0 (±2.3)	0.4 (±2.2)	0.2 (±2.3)	0.1 (±2.3)
104	169,214	113,506	72,565 (±2,345)	55.6 (±2.0)	13.3 (±1.6)	0.0 (±1.9)	0.0(±1.9)	28.6 (±1.5)	0.5 (±1.7)	1.2 (±1.8)	0.1 (±1.9)	0.5 (±1.8)	0.1 (±1.9)	0.0 (±1.9)
105	169,325	122,293	87,545 (±2,328)	23.8 (±1.4)	14.5 (±1.4)	0.1 (±1.6)	0.2(±1.6)	55.8 (±1.3)	0.5 (±1.5)	4.5 (±1.3)	0.1 (±1.6)	0.3 (±1.5)	0.1 (±1.6)	0.1 (±1.6)
106	163,027	115,407	96,175 (±2,475)	13.0 (±1.1)	4.5 (±0.8)	0.0 (±0.8)	0.1(±0.8)	77.1 (±1.2)	0.4 (±0.7)	3.9 (±0.7)	0.1 (±0.8)	0.4 (±0.8)	0.3 (±0.7)	0.1 (±0.8)
107	169,477	120,258	96,150 (±3,231)	17.6 (±1.4)	34.1 (±1.7)	0.2 (±1.4)	0.1(±1.4)	43.9 (±1.5)	0.2 (±1.3)	3.4 (±1.2)	0.0 (±1.4)	0.3 (±1.3)	0.1 (±1.4)	0.2 (±1.4)
108	169,385	139,672	121,920 (±2,695)	13.8 (±1.2)	7.6 (±1.2)	0.1 (±1.3)	0.3(±1.3)	74.0 (±0.8)	0.5 (±1.3)	2.2 (±1.1)	0.2 (±1.4)	0.8 (±1.3)	0.3 (±1.3)	0.1 (±1.3)
109	169,212	118,388	100,805 (±2,706)	11.9 (±1.2)	51.1 (±1.7)	0.3 (±1.1)	0.3(±1.1)	33.4 (±1.2)	0.5 (±1.0)	1.7 (±1.0)	0.4 (±1.2)	0.4 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
110	169,550	116,845	92,645 (±2,590)	14.7 (±1.4)	53.3 (±1.5)	0.2 (±1.4)	0.2(±1.5)	30.4 (±1.6)	0.2 (±1.4)	0.5 (±1.4)	0.0 (±1.5)	0.3 (±1.4)	0.0 (±1.5)	0.1 (±1.5)
111	168,783	120,306	102,100 (±2,728)	16.4 (±1.4)	51.0 (±1.5)	0.2 (±1.2)	0.2(±1.2)	29.9 (±1.2)	0.2 (±1.2)	1.4 (±1.1)	0.1 (±1.2)	0.3 (±1.2)	0.1 (±1.2)	0.4 (±1.2)
112	169,016	120,088	91,670 (±2,413)	15.1 (±1.3)	12.5 (±1.3)	0.1 (±1.2)	0.3(±1.2)	61.8 (±1.2)	0.4 (±1.1)	8.4 (±1.3)	0.0 (±1.3)	1.0 (±1.1)	0.2 (±1.2)	0.2 (±1.2)
113	168,858	121,133	96,585 (±2,449)	15.5 (±1.3)	16.6 (±1.4)	0.2 (±1.3)	0.3(±1.3)	62.0 (±1.1)	0.3 (±1.2)	4.1 (±1.1)	0.0 (±1.3)	0.7 (±1.1)	0.2 (±1.3)	0.1 (±1.3)
114	169,192	129,846	121,230 (±2,730)	9.6 (±1.1)	9.3 (±1.3)	0.1 (±1.3)	0.0(±1.3)	78.3 (±0.7)	0.2 (±1.3)	2.0 (±1.1)	0.1 (±1.3)	0.3 (±1.2)	0.1 (±1.3)	0.0 (±1.3)
115	168,791	129,290	97,930 (±2,265)	12.8 (±1.2)	11.4 (±1.2)	0.2 (±1.1)	0.1(±1.2)	66.4 (±1.1)	0.6 (±1.1)	7.9 (±1.0)	0.1 (±1.2)	0.2 (±1.1)	0.3 (±1.1)	0.1 (±1.2)
116	171,441	132,793	113,690 (±2,714)	56.8 (±1.5)	4.8 (±1.0)	0.1 (±1.1)	0.0(±1.1)	35.4 (±1.2)	0.4 (±1.1)	1.8 (±1.0)	0.0 (±1.1)	0.3 (±1.1)	0.1 (±1.1)	0.2 (±1.1)
117	171,478	118,741	79,660 (±2,942)	62.0 (±1.6)	6.0 (±1.0)	0.1 (±1.1)	0.1(±1.1)	29.8 (±1.8)	0.3 (±1.0)	1.0 (±1.0)	0.1 (±1.1)	0.2 (±1.0)	0.3 (±1.1)	0.0 (±1.1)
118	171,805	122,702	99,915 (±2,927)	64.6 (±1.9)	2.9 (±1.3)	0.2 (±1.3)	0.0(±1.4)	30.6 (±1.2)	0.3 (±1.3)	0.9 (±1.3)	0.0 (±1.4)	0.3 (±1.3)	0.1 (±1.3)	0.1 (±1.4)
119	171,819	123,502	109,090 (±3,035)	58.1 (±1.6)	8.1 (±1.1)	0.2 (±1.3)	0.1(±1.3)	31.2 (±1.1)	0.2 (±1.3)	1.1 (±1.2)	0.2 (±1.3)	0.4 (±1.3)	0.2 (±1.3)	0.1 (±1.3)
120	171,299	121,148	93,790 (±2,735)	35.7 (±1.5)	29.0 (±1.5)	0.4 (±1.5)	0.2(±1.5)	31.4 (±1.5)	0.3 (±1.5)	2.0 (±1.3)	0.2 (±1.5)	0.2 (±1.5)	0.5 (±1.5)	0.2 (±1.5)
121	171,336	131,448	120,475 (±2,583)	25.9 (±1.3)	4.5 (±0.9)	0.1 (±1.1)	0.0(±1.1)	66.4 (±0.9)	0.4 (±1.0)	1.4 (±0.9)	0.2 (±1.1)	0.5 (±1.0)	0.4 (±1.0)	0.1 (±1.1)
122	171,294	125,009	95,335 (±2,034)	23.3 (±1.3)	3.1 (±0.7)	0.0 (±0.8)	0.0(±0.8)	69.2 (±0.9)	0.2 (±0.7)	3.2 (±0.7)	0.0 (±0.8)	0.5 (±0.7)	0.3 (±0.7)	0.3 (±0.7)
123	171,122	132,419	116,460 (±3,169)	61.0 (±1.6)	4.0 (±1.3)	0.1 (±1.4)	0.0(±1.4)	33.2 (±1.2)	0.6 (±1.3)	0.7 (±1.3)	0.0 (±1.4)	0.3 (±1.4)	0.1 (±1.4)	0.1 (±1.4)
124	171,675	118,602	100,345 (±2,617)	62.5 (±1.7)	8.8 (±1.1)	0.3 (±1.0)	0.1(±1.0)	25.2 (±1.1)	0.8 (±0.9)	1.6 (±0.8)	0.1 (±1.0)	0.2 (±0.9)	0.3 (±0.9)	0.1 (±1.0)
125	171,504	123,123	102,750 (±3,871)	63.8 (±1.3)	5.3 (±1.2)	0.1 (±1.2)	0.1(±1.2)	28.5 (±2.0)	0.2 (±1.2)	1.3 (±1.1)	0.2 (±1.3)	0.2 (±1.2)	0.2 (±1.2)	0.1 (±1.2)
126	170,355	126,868	96,945 (±2,358)	12.3 (±1.1)	9.9 (±1.1)	0.1 (±1.1)	0.1(±1.1)	70.3 (±1.0)	0.1 (±1.0)	6.3 (±0.9)	0.1 (±1.1)	0.5 (±1.0)	0.3 (±1.0)	0.0 (±1.1)
127	169,083	120,292	112,695 (±2,474)	11.1 (±0.9)	8.6 (±1.1)	0.0 (±0.9)	0.0(±0.9)	77.4 (±1.1)	0.4 (±0.8)	1.6 (±0.7)	0.2 (±0.9)	0.3 (±0.8)	0.2 (±0.8)	0.1 (±0.8)
128	169,696	122,929	108,095 (±2,473)	19.6 (±1.1)	7.9 (±1.0)	0.1 (±1.1)	0.0(±1.1)	69.6 (±1.1)	0.4 (±1.0)	1.7 (±1.0)	0.0 (±1.1)	0.6 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
129	171,447	128,510	111,455 (±2,535)	14.1 (±1.1)	6.8 (±0.9)	0.1 (±1.0)	0.0(±1.0)	70.3 (±1.1)	0.3 (±0.9)	7.3 (±0.8)	0.2 (±1.0)	0.4 (±0.9)	0.3 (±0.9)	0.2 (±1.0)
130	169,277	115,929	90,850 (±2,044)	13.8 (±1.1)	9.0 (±1.1)	0.0 (±0.7)	0.0(±0.7)	71.8 (±1.1)	0.4 (±0.6)	4.5 (±0.7)	0.0 (±0.7)	0.4 (±0.6)	0.1 (±0.7)	0.1 (±0.7)
131	170,771	118,979	82,290 (±2,697)	20.0 (±1.7)	54.6 (±1.8)	0.2 (±1.3)	0.1(±1.3)	18.0 (±1.3)	0.2 (±1.3)	6.6 (±1.2)	0.0 (±1.3)	0.1 (±1.3)	0.0 (±1.3)	0.2 (±1.3)
132	171,811	116,576	78,070 (±1,895)	20.0 (±1.5)	10.3 (±1.0)	0.2 (±0.8)	0.0(±0.9)	63.2 (±1.1)	0.2 (±0.8)	5.8 (±0.8)	0.0 (±0.9)	0.2 (±0.8)	0.1 (±0.8)	0.0 (±0.9)
133	171,746	137,113	118,795 (±2,653)	9.8 (±1.0)	7.3 (±1.1)	0.1 (±1.1)	0.0(±1.1)	76.8 (±0.7)	0.2 (±1.1)	5.2 (±0.9)	0.0 (±1.1)	0.4 (±1.0)	0.2 (±1.0)	0.0 (±1.1)
134	171,094	141,384	132,415 (±3,004)	12.1 (±0.9)	3.4 (±0.9)	0.1 (±1.1)	0.0(±1.1)	79.1 (±0.9)	0.2 (±1.1)	4.5 (±0.8)	0.1 (±1.1)	0.2 (±1.1)	0.2 (±1.0)	0.1 (±1.1)
135	171,315	125,036	94,365 (±2,415)	22.4 (±1.5)	13.4 (±1.3)	0.1 (±1.0)	0.0(±1.0)	54.7 (±1.2)	0.4 (±0.9)	8.2 (±1.0)	0.2 (±1.0)	0.3 (±0.9)	0.1 (±1.0)	0.1 (±1.0)
136	167,003	121,026	95,950 (±2,657)	7.4 (±0.9)	9.6 (±1.4)	0.2 (±0.9)	0.0(±0.9)	80.8 (±0.8)	0.3 (±0.8)	0.9 (±0.8)	0.0 (±0.9)	0.6 (±0.7)	0.1 (±0.9)	0.1 (±0.9)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH302

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
137	171,186	126,442	75,465 (±2,590)	20.7 (±1.6)	32.0 (±2.1)	0.1 (±1.4)	0.0(±1.5)	34.4 (±1.3)	0.5 (±1.4)	12.0 (±1.2)	0.0 (±1.5)	0.2 (±1.4)	0.1 (±1.4)	0.0 (±1.4)
138	171,632	121,090	80,065 (±2,345)	23.3 (±1.5)	12.9 (±1.3)	0.1 (±1.1)	0.1(±1.1)	55.9 (±1.3)	0.3 (±1.0)	6.5 (±1.0)	0.0 (±1.1)	0.5 (±0.9)	0.2 (±1.0)	0.2 (±1.0)
139	170,711	118,349	85,645 (±2,606)	19.5 (±1.4)	54.4 (±1.7)	0.3 (±1.2)	0.0(±1.2)	20.4 (±1.2)	0.2 (±1.2)	4.9 (±1.1)	0.0 (±1.3)	0.1 (±1.2)	0.1 (±1.2)	0.0 (±1.3)
140	170,679	112,582	65,545 (±2,311)	50.8 (±2.3)	25.2 (±1.9)	0.0 (±1.6)	0.0(±1.7)	20.5 (±1.4)	0.0 (±1.6)	3.3 (±1.5)	0.0 (±1.7)	0.1 (±1.6)	0.1 (±1.6)	0.0 (±1.7)
141	170,952	119,460	86,620 (±3,144)	16.2 (±1.2)	50.4 (±1.7)	0.3 (±1.2)	0.1(±1.2)	29.9 (±1.6)	0.2 (±1.2)	1.7 (±1.2)	0.6 (±1.3)	0.1 (±1.2)	0.1 (±1.2)	0.2 (±1.3)
142	170,597	118,538	84,420 (±2,467)	25.0 (±1.6)	52.4 (±1.8)	0.1 (±1.3)	0.1(±1.4)	20.6 (±1.5)	0.1 (±1.3)	1.3 (±1.3)	0.0 (±1.4)	0.1 (±1.3)	0.0 (±1.4)	0.1 (±1.3)
143	169,126	112,892	76,950 (±2,638)	54.5 (±2.0)	11.1 (±1.8)	0.0 (±1.7)	0.0(±1.8)	33.2 (±1.7)	0.6 (±1.7)	0.4 (±1.7)	0.0 (±1.8)	0.2 (±1.7)	0.0 (±1.7)	0.0 (±1.8)
144	170,004	114,456	76,365 (±2,458)	52.8 (±1.8)	9.4 (±1.6)	0.1 (±1.6)	0.0(±1.6)	34.4 (±1.7)	0.4 (±1.6)	2.1 (±1.5)	0.1 (±1.6)	0.7 (±1.5)	0.0 (±1.6)	0.1 (±1.6)
145	169,251	118,781	84,985 (±2,665)	53.0 (±2.0)	15.6 (±1.6)	0.1 (±1.4)	0.0(±1.4)	26.6 (±1.4)	0.2 (±1.4)	4.1 (±1.3)	0.0 (±1.4)	0.3 (±1.4)	0.1 (±1.4)	0.1 (±1.4)
146	169,971	122,042	81,625 (±2,425)	16.0 (±1.4)	55.3 (±1.7)	0.1 (±1.5)	0.1(±1.5)	24.4 (±1.4)	0.1 (±1.5)	3.7 (±1.3)	0.1 (±1.5)	0.2 (±1.5)	0.1 (±1.5)	0.0 (±1.5)
147	169,724	139,969	113,330 (±4,525)	12.5 (±1.0)	51.0 (±1.3)	0.1 (±1.3)	0.1(±1.2)	30.8 (±1.6)	0.1 (±1.3)	4.8 (±1.2)	0.1 (±1.3)	0.2 (±1.2)	0.2 (±1.2)	0.1 (±1.3)
148	169,642	119,705	79,870 (±2,664)	50.6 (±2.1)	10.7 (±1.5)	0.1 (±1.7)	0.0(±1.7)	35.8 (±1.5)	0.3 (±1.6)	2.1 (±1.5)	0.0 (±1.7)	0.3 (±1.6)	0.0 (±1.7)	0.1 (±1.7)
149	171,075	126,586	91,320 (±3,195)	16.8 (±1.3)	27.4 (±1.6)	0.2 (±0.9)	0.0(±1.0)	41.0 (±2.2)	0.2 (±0.9)	13.8 (±1.1)	0.1 (±1.0)	0.1 (±0.9)	0.2 (±0.9)	0.2 (±0.9)
150	171,314	120,116	86,225 (±2,130)	12.1 (±1.0)	9.5 (±1.1)	0.1 (±0.8)	0.1(±0.9)	73.8 (±1.1)	0.2 (±0.8)	3.7 (±0.7)	0.1 (±0.9)	0.3 (±0.8)	0.2 (±0.8)	0.0 (±0.9)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH299

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
1	165,823	125,927	120,660 (±2,890)	3.1 (±0.9)	17.8 (±1.3)	0.4 (±1.3)	0.2(±1.2)	76.5 (±0.9)	0.8 (±1.1)	0.3 (±1.2)	0.1 (±1.2)	0.6 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
2	173,869	130,806	119,950 (±2,981)	5.5 (±0.7)	6.9 (±0.9)	0.0 (±1.2)	0.0(±1.2)	86.0 (±1.0)	0.6 (±1.0)	0.2 (±1.1)	0.1 (±1.2)	0.6 (±1.0)	0.0 (±1.2)	0.0 (±1.2)
3	164,955	119,595	92,595 (±2,720)	9.7 (±1.1)	9.8 (±1.4)	0.1 (±1.0)	0.0(±1.0)	78.7 (±1.0)	0.3 (±0.9)	0.5 (±1.0)	0.0 (±1.0)	0.7 (±0.8)	0.1 (±1.0)	0.1 (±1.0)
4	168,429	123,603	110,850 (±2,711)	6.3 (±0.8)	8.7 (±1.0)	0.1 (±1.0)	0.0(±1.0)	83.1 (±0.8)	0.6 (±0.9)	0.4 (±0.9)	0.1 (±1.0)	0.5 (±0.8)	0.1 (±1.0)	0.0 (±1.0)
5	160,253	120,169	103,245 (±3,376)	5.2 (±0.8)	10.9 (±2.0)	0.1 (±1.2)	0.2(±1.2)	82.0 (±3.6)	0.7 (±1.0)	0.3 (±1.1)	0.0 (±1.3)	0.5 (±1.1)	0.0 (±1.2)	0.1 (±1.2)
6	160,008	119,154	106,645 (±2,591)	6.5 (±0.9)	20.7 (±1.2)	0.1 (±1.1)	0.0(±1.2)	71.3 (±1.0)	0.3 (±1.1)	0.5 (±1.0)	0.0 (±1.2)	0.3 (±1.1)	0.2 (±1.1)	0.1 (±1.2)
7	161,039	120,296	107,240 (±3,065)	3.9 (±0.7)	17.3 (±1.2)	0.1 (±1.3)	0.2(±1.3)	76.6 (±1.2)	0.5 (±1.2)	0.7 (±1.2)	0.1 (±1.3)	0.6 (±1.2)	0.0 (±1.3)	0.0 (±1.3)
8	161,098	123,550	113,660 (±3,281)	8.8 (±0.9)	18.0 (±1.5)	0.1 (±1.2)	0.1(±1.2)	71.8 (±2.9)	0.4 (±1.1)	0.4 (±1.2)	0.1 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.0 (±1.2)
9	166,719	125,947	118,575 (±2,997)	2.5 (±1.0)	19.6 (±1.4)	0.1 (±1.2)	0.0(±1.3)	76.7 (±0.8)	0.3 (±1.2)	0.2 (±1.2)	0.0 (±1.3)	0.5 (±1.1)	0.0 (±1.3)	0.0 (±1.3)
10	163,063	116,978	104,675 (±2,403)	13.1 (±1.0)	9.0 (±1.0)	0.1 (±1.1)	0.0(±1.1)	76.1 (±0.8)	0.5 (±1.0)	0.5 (±1.0)	0.1 (±1.1)	0.4 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
11	168,699	128,086	111,890 (±3,219)	5.7 (±0.8)	17.4 (±1.0)	0.1 (±1.2)	0.0(±1.2)	75.3 (±1.2)	0.4 (±1.1)	0.4 (±1.1)	0.0 (±1.2)	0.5 (±1.1)	0.2 (±1.2)	0.0 (±1.2)
12	160,573	119,556	100,440 (±2,565)	11.8 (±1.0)	21.4 (±1.4)	0.1 (±1.4)	0.1(±1.4)	65.1 (±1.1)	0.3 (±1.3)	0.6 (±1.3)	0.0 (±1.4)	0.5 (±1.2)	0.1 (±1.4)	0.1 (±1.4)
13	170,617	131,139	117,085 (±2,640)	9.5 (±0.9)	12.7 (±1.1)	0.1 (±1.3)	0.0(±1.3)	76.8 (±0.9)	0.1 (±1.3)	0.3 (±1.2)	0.0 (±1.3)	0.4 (±1.2)	0.0 (±1.3)	0.0 (±1.3)
14	163,187	131,479	103,475 (±2,991)	14.1 (±1.0)	10.0 (±1.0)	0.2 (±1.1)	0.1(±1.1)	72.7 (±1.4)	0.3 (±1.0)	1.9 (±0.9)	0.0 (±1.1)	0.4 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
15	167,349	120,450	99,910 (±2,294)	7.4 (±0.8)	4.1 (±0.8)	0.1 (±0.8)	0.0(±0.9)	84.9 (±0.9)	0.3 (±0.8)	2.1 (±0.6)	0.0 (±0.9)	0.8 (±0.7)	0.1 (±0.8)	0.2 (±0.8)
16	166,647	122,271	100,140 (±2,737)	9.3 (±1.0)	5.8 (±1.1)	0.1 (±1.0)	0.0(±1.0)	83.0 (±1.0)	0.4 (±0.9)	0.8 (±0.9)	0.0 (±1.0)	0.5 (±0.8)	0.1 (±1.0)	0.0 (±1.0)
17	168,753	125,037	112,400 (±3,406)	25.0 (±1.4)	9.5 (±1.2)	0.1 (±1.1)	0.0(±1.1)	64.5 (±1.1)	0.3 (±1.1)	0.2 (±1.1)	0.0 (±1.1)	0.4 (±1.0)	0.0 (±1.1)	0.0 (±1.1)
18	169,888	132,877	119,850 (±4,391)	8.1 (±1.0)	18.2 (±1.2)	0.0 (±1.1)	0.0(±1.1)	72.3 (±1.1)	0.4 (±1.0)	0.3 (±1.0)	0.1 (±1.1)	0.5 (±1.0)	0.1 (±1.0)	0.1 (±1.0)
19	171,969	131,682	124,465 (±2,849)	3.7 (±0.8)	12.2 (±1.0)	0.1 (±1.1)	0.1(±1.1)	82.6 (±0.9)	0.5 (±1.0)	0.2 (±1.0)	0.1 (±1.1)	0.6 (±1.0)	0.0 (±1.1)	0.0 (±1.1)
20	159,816	121,754	100,810 (±2,573)	10.3 (±1.0)	3.4 (±0.9)	0.0 (±1.1)	0.0(±1.1)	84.6 (±0.8)	0.4 (±1.0)	0.5 (±1.0)	0.1 (±1.1)	0.4 (±0.9)	0.1 (±1.1)	0.0 (±1.1)
21	172,180	130,308	122,140 (±2,627)	5.2 (±0.8)	7.4 (±1.2)	0.1 (±1.2)	0.0(±1.2)	85.1 (±0.8)	0.5 (±1.1)	1.2 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.0 (±1.2)
22	161,930	122,897	108,385 (±3,480)	7.7 (±1.1)	51.3 (±2.1)	0.2 (±1.4)	0.1(±1.4)	38.3 (±1.0)	0.3 (±1.4)	1.6 (±1.2)	0.1 (±1.4)	0.3 (±1.3)	0.1 (±1.4)	0.0 (±1.4)
23	163,720	123,736	115,770 (±2,837)	16.6 (±1.1)	20.3 (±1.3)	0.2 (±1.3)	0.0(±1.4)	60.7 (±1.1)	0.4 (±1.2)	1.1 (±1.2)	0.0 (±1.4)	0.4 (±1.2)	0.0 (±1.4)	0.1 (±1.3)
24	162,685	118,491	98,615 (±2,321)	11.3 (±1.0)	7.4 (±1.1)	0.1 (±1.1)	0.0(±1.1)	77.5 (±0.9)	0.4 (±1.0)	2.6 (±0.9)	0.0 (±1.1)	0.5 (±0.9)	0.2 (±1.0)	0.0 (±1.1)
25	174,168	129,041	116,795 (±2,903)	20.8 (±1.1)	12.0 (±1.1)	0.1 (±1.3)	0.0(±1.3)	64.7 (±1.0)	0.6 (±1.2)	1.0 (±1.2)	0.0 (±1.3)	0.6 (±1.2)	0.1 (±1.3)	0.1 (±1.3)
26	160,091	117,247	85,950 (±2,456)	11.6 (±1.1)	10.6 (±1.2)	0.0 (±1.0)	0.0(±1.1)	57.3 (±1.5)	0.4 (±1.0)	19.6 (±1.7)	0.0 (±1.1)	0.2 (±1.0)	0.2 (±1.0)	0.1 (±1.0)
27	160,084	113,596	92,920 (±2,776)	14.8 (±1.5)	44.3 (±1.8)	0.1 (±1.0)	0.2(±1.0)	30.8 (±1.3)	0.3 (±0.9)	9.0 (±1.1)	0.0 (±1.0)	0.2 (±1.0)	0.1 (±1.0)	0.1 (±1.0)
28	160,373	107,968	68,830 (±2,086)	15.0 (±1.5)	14.2 (±1.6)	0.1 (±0.9)	0.0(±0.9)	58.9 (±1.2)	0.1 (±0.8)	10.4 (±1.2)	0.0 (±0.9)	0.3 (±0.7)	0.2 (±0.8)	0.1 (±0.9)
29	175,700	124,171	100,500 (±2,364)	17.4 (±1.3)	10.3 (±1.1)	0.1 (±0.9)	0.1(±0.9)	65.8 (±1.3)	0.1 (±1.0)	5.8 (±0.9)	0.0 (±1.0)	0.3 (±0.9)	0.1 (±0.9)	0.1 (±0.9)
30	170,732	129,235	119,375 (±2,946)	30.7 (±1.3)	4.3 (±1.0)	0.1 (±1.2)	0.0(±1.2)	62.7 (±1.0)	0.1 (±1.1)	1.2 (±1.0)	0.0 (±1.2)	0.7 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
31	161,730	102,480	59,025 (±2,384)	93.1 (±1.2)	0.3 (±1.5)	0.0 (±1.5)	0.0(±1.5)	6.2 (±1.2)	0.1 (±1.5)	0.1 (±1.5)	0.0 (±1.5)	0.2 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
32	169,891	125,063	108,125 (±2,876)	61.2 (±1.6)	4.0 (±1.2)	0.0 (±1.4)	0.0(±1.4)	33.6 (±1.2)	0.2 (±1.4)	0.5 (±1.3)	0.0 (±1.4)	0.4 (±1.3)	0.0 (±1.4)	0.0 (±1.4)
33	172,135	119,518	109,865 (±2,261)	8.5 (±0.8)	5.9 (±0.8)	0.1 (±0.6)	0.1(±0.7)	81.2 (±0.9)	0.4 (±0.5)	2.7 (±0.6)	0.1 (±0.6)	0.5 (±0.5)	0.3 (±0.6)	0.1 (±0.6)
34	171,770	124,711	111,885 (±2,912)	60.5 (±1.7)	3.2 (±1.1)	0.0 (±1.2)	0.0(±1.2)	34.5 (±1.1)	0.3 (±1.1)	1.0 (±1.0)	0.0 (±1.2)	0.3 (±1.1)	0.2 (±1.2)	0.0 (±1.2)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH299

2010 Census			Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
35	168,627	109,154	66,830 (±2,321)	78.9 (±1.6)	0.5 (±1.3)	0.0 (±1.4)	0.0(±1.4)	20.0 (±1.4)	0.1 (±1.4)	0.2 (±1.3)	0.0 (±1.4)	0.2 (±1.4)	0.0 (±1.4)	0.0 (±1.4)
36	168,963	110,963	63,135 (±2,263)	86.0 (±1.4)	0.4 (±1.5)	0.0 (±1.6)	0.0(±1.6)	12.7 (±1.2)	0.3 (±1.6)	0.5 (±1.5)	0.0 (±1.6)	0.0 (±1.6)	0.0 (±1.6)	0.0 (±1.6)
37	169,088	113,454	74,465 (±2,215)	81.5 (±1.4)	0.2 (±1.8)	0.1 (±1.8)	0.1(±1.8)	17.5 (±1.4)	0.2 (±1.8)	0.1 (±1.8)	0.1 (±1.8)	0.1 (±1.8)	0.0 (±1.8)	0.0 (±1.8)
38	168,214	110,865	79,695 (±2,367)	80.2 (±1.4)	0.3 (±1.4)	0.0 (±1.4)	0.2(±1.4)	18.2 (±1.3)	0.3 (±1.4)	0.8 (±1.3)	0.0 (±1.4)	0.1 (±1.4)	0.0 (±1.4)	0.0 (±1.4)
39	168,659	110,751	70,595 (±2,484)	78.9 (±1.8)	0.3 (±1.6)	0.0 (±1.5)	0.1(±1.5)	20.0 (±1.3)	0.3 (±1.5)	0.4 (±1.4)	0.0 (±1.5)	0.0 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
40	168,662	108,086	70,095 (±2,602)	88.4 (±1.4)	1.4 (±1.2)	0.1 (±1.2)	0.0(±1.3)	9.2 (±1.1)	0.0 (±1.2)	0.5 (±1.1)	0.0 (±1.3)	0.3 (±1.2)	0.0 (±1.2)	0.1 (±1.2)
41	168,776	115,033	84,005 (±2,727)	75.7 (±1.8)	0.9 (±1.1)	0.1 (±1.2)	0.0(±1.2)	21.8 (±1.1)	0.1 (±1.2)	1.1 (±1.0)	0.0 (±1.2)	0.1 (±1.2)	0.1 (±1.2)	0.0 (±1.2)
42	163,560	109,169	76,870 (±2,221)	91.3 (±0.9)	0.4 (±1.4)	0.0 (±1.5)	0.0(±1.5)	7.6 (±1.1)	0.1 (±1.4)	0.4 (±1.4)	0.0 (±1.5)	0.1 (±1.4)	0.0 (±1.5)	0.0 (±1.5)
43	162,634	119,522	111,210 (±3,044)	60.1 (±1.4)	2.8 (±1.1)	0.0 (±1.3)	0.0(±1.3)	36.0 (±1.1)	0.3 (±1.2)	0.3 (±1.2)	0.0 (±1.3)	0.3 (±1.1)	0.0 (±1.3)	0.0 (±1.3)
44	174,451	126,713	105,630 (±2,380)	29.7 (±1.5)	4.8 (±0.8)	0.1 (±1.0)	0.0(±1.0)	63.2 (±1.1)	0.4 (±0.9)	1.0 (±0.9)	0.1 (±1.0)	0.3 (±0.9)	0.2 (±1.0)	0.1 (±1.0)
45	167,604	126,549	109,060 (±3,158)	25.5 (±1.5)	4.1 (±0.9)	0.0 (±0.9)	0.0(±0.9)	68.4 (±1.1)	0.5 (±0.8)	1.0 (±0.8)	0.0 (±1.0)	0.3 (±0.8)	0.1 (±0.9)	0.0 (±0.9)
46	166,410	118,539	81,745 (±2,659)	24.6 (±1.8)	28.6 (±1.7)	0.2 (±1.3)	0.2(±1.3)	42.2 (±1.4)	0.6 (±1.3)	2.8 (±1.3)	0.0 (±1.4)	0.3 (±1.3)	0.2 (±1.3)	0.2 (±1.3)
47	175,314	127,689	116,795 (±2,272)	12.3 (±0.9)	2.0 (±0.6)	0.2 (±0.7)	0.0(±0.8)	80.5 (±0.8)	0.3 (±0.7)	3.6 (±0.5)	0.1 (±0.8)	0.6 (±0.6)	0.4 (±0.6)	0.0 (±0.8)
48	173,008	135,585	112,175 (±2,131)	16.7 (±1.0)	2.2 (±0.9)	0.1 (±1.1)	0.0(±1.1)	77.5 (±0.9)	0.3 (±1.0)	2.6 (±0.8)	0.0 (±1.1)	0.2 (±1.0)	0.3 (±1.0)	0.1 (±1.1)
49	167,309	144,371	120,915 (±3,933)	14.3 (±1.0)	4.7 (±1.1)	0.2 (±1.2)	0.0(±1.2)	75.1 (±0.8)	0.3 (±1.2)	4.2 (±1.0)	0.0 (±1.2)	0.6 (±1.1)	0.6 (±1.1)	0.1 (±1.2)
50	166,516	124,252	99,900 (±2,841)	17.7 (±1.3)	10.8 (±1.1)	0.2 (±0.9)	0.0(±1.0)	63.5 (±1.2)	0.2 (±1.0)	6.4 (±0.8)	0.0 (±1.0)	0.6 (±0.8)	0.4 (±0.9)	0.2 (±1.0)
51	175,709	128,793	86,740 (±2,646)	44.0 (±1.8)	12.3 (±1.2)	0.1 (±1.3)	0.0(±1.4)	40.5 (±1.5)	0.1 (±1.3)	1.9 (±1.2)	0.1 (±1.4)	0.6 (±1.3)	0.3 (±1.3)	0.0 (±1.4)
52	165,994	114,146	95,865 (±2,515)	19.6 (±1.5)	9.6 (±1.1)	0.1 (±0.9)	0.1(±0.9)	66.9 (±1.3)	0.3 (±0.8)	2.5 (±0.8)	0.0 (±0.9)	0.3 (±0.8)	0.3 (±0.8)	0.2 (±0.9)
53	162,897	127,381	115,000 (±2,758)	23.1 (±1.2)	1.1 (±1.1)	0.1 (±1.2)	0.0(±1.2)	74.2 (±1.0)	0.5 (±1.1)	0.3 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
54	167,736	117,164	92,035 (±2,637)	15.8 (±1.3)	22.2 (±1.6)	0.5 (±1.0)	0.1(±1.1)	56.1 (±1.3)	0.7 (±0.9)	2.6 (±0.8)	0.6 (±1.1)	0.4 (±1.0)	0.5 (±0.9)	0.5 (±1.0)
55	162,176	119,755	107,090 (±2,880)	14.9 (±1.1)	16.4 (±1.2)	0.4 (±1.1)	0.0(±1.2)	64.9 (±0.9)	0.5 (±1.1)	1.7 (±1.0)	0.2 (±1.2)	0.6 (±1.1)	0.4 (±1.1)	0.2 (±1.2)
56	163,869	123,411	112,635 (±2,760)	12.4 (±1.0)	10.0 (±1.1)	0.2 (±1.1)	0.0(±1.1)	74.9 (±1.0)	0.3 (±1.0)	1.4 (±1.0)	0.0 (±1.1)	0.5 (±1.0)	0.2 (±1.1)	0.1 (±1.1)
57	164,418	124,630	111,875 (±2,779)	7.2 (±1.0)	17.0 (±1.2)	0.1 (±1.2)	0.0(±1.2)	74.5 (±0.9)	0.2 (±1.1)	0.4 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.0 (±1.2)	0.0 (±1.2)
58	169,146	123,826	115,500 (±2,749)	8.7 (±0.9)	3.3 (±1.0)	0.1 (±1.1)	0.0(±1.1)	86.0 (±0.9)	0.7 (±1.0)	0.4 (±1.1)	0.2 (±1.1)	0.5 (±0.9)	0.1 (±1.1)	0.0 (±1.1)
59	163,609	122,193	113,535 (±3,171)	11.4 (±0.9)	10.5 (±1.7)	0.3 (±1.2)	0.0(±1.2)	75.2 (±0.7)	0.5 (±1.1)	0.9 (±1.1)	0.1 (±1.2)	0.6 (±1.1)	0.4 (±1.2)	0.1 (±1.2)
60	171,429	131,870	123,985 (±2,749)	9.2 (±0.9)	2.3 (±1.1)	0.1 (±1.2)	0.1(±1.3)	86.9 (±0.5)	0.7 (±1.1)	0.2 (±1.2)	0.0 (±1.2)	0.4 (±1.1)	0.0 (±1.2)	0.0 (±1.2)
61	176,054	130,782	117,645 (±2,911)	6.0 (±0.7)	2.2 (±0.9)	0.1 (±0.9)	0.0(±0.9)	89.9 (±0.7)	0.6 (±0.7)	0.3 (±0.8)	0.1 (±0.9)	0.7 (±0.7)	0.1 (±0.9)	0.1 (±0.9)
62	160,023	122,203	113,650 (±2,711)	4.2 (±0.9)	6.3 (±1.0)	0.1 (±1.3)	0.0(±1.3)	86.9 (±0.7)	1.1 (±1.1)	0.3 (±1.2)	0.0 (±1.3)	0.9 (±1.1)	0.1 (±1.3)	0.0 (±1.3)
63	167,337	115,634	104,695 (±2,433)	8.0 (±0.9)	4.5 (±0.8)	0.1 (±0.7)	0.2(±0.7)	83.8 (±0.9)	0.2 (±0.5)	2.3 (±0.6)	0.0 (±0.7)	0.6 (±0.5)	0.2 (±0.6)	0.1 (±0.7)
64	167,588	129,175	113,745 (±3,750)	10.1 (±0.9)	8.2 (±0.9)	0.2 (±0.8)	0.3(±0.9)	77.8 (±1.3)	0.3 (±0.7)	1.5 (±0.8)	0.0 (±0.9)	1.2 (±0.7)	0.2 (±0.8)	0.1 (±0.9)
65	165,742	124,977	104,365 (±2,714)	9.8 (±1.1)	10.9 (±1.2)	0.2 (±0.9)	0.1(±0.9)	70.6 (±1.3)	0.3 (±0.8)	6.9 (±1.0)	0.1 (±0.9)	0.7 (±0.8)	0.2 (±0.8)	0.2 (±0.9)
66	172,129	130,796	114,130 (±2,415)	6.0 (±0.8)	7.9 (±1.1)	0.1 (±1.0)	0.0(±1.1)	74.9 (±1.1)	0.5 (±1.0)	9.7 (±0.9)	0.1 (±1.0)	0.3 (±1.0)	0.3 (±1.0)	0.2 (±1.0)
67	172,141	126,368	113,715 (±2,340)	7.5 (±0.8)	6.2 (±1.0)	0.1 (±1.1)	0.0(±1.1)	76.0 (±1.0)	0.6 (±1.0)	8.8 (±0.9)	0.1 (±1.1)	0.4 (±1.0)	0.2 (±1.0)	0.1 (±1.1)
68	160,508	121,547	110,960 (±2,268)	12.8 (±0.9)	4.5 (±1.2)	0.2 (±1.4)	0.0(±1.5)	80.8 (±0.8)	0.5 (±1.3)	0.3 (±1.4)	0.0 (±1.5)	0.9 (±1.3)	0.0 (±1.5)	0.0 (±1.5)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH299

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error												
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)										
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
69	160,087	123,063	114,910 (±2,286)	9.7 (±0.8)	9.1 (±1.1)	0.1 (±1.3)	0.0(±1.3)	77.8 (±0.8)	0.7 (±1.1)	1.5 (±1.1)	0.0 (±1.3)	0.8 (±1.1)	0.1 (±1.3)	0.1 (±1.2)
70	172,135	117,432	85,105 (±2,132)	10.0 (±1.1)	8.2 (±1.0)	0.1 (±0.9)	0.0(±0.9)	78.1 (±1.0)	0.4 (±0.7)	2.5 (±0.8)	0.0 (±0.9)	0.5 (±0.7)	0.2 (±0.9)	0.0 (±0.9)
71	166,924	127,097	117,980 (±2,586)	17.9 (±1.0)	6.9 (±1.0)	0.1 (±1.3)	0.0(±1.3)	72.8 (±0.8)	0.4 (±1.2)	1.0 (±1.2)	0.1 (±1.3)	0.5 (±1.2)	0.2 (±1.3)	0.1 (±1.3)
72	170,479	130,771	113,985 (±2,708)	27.6 (±1.3)	3.6 (±1.2)	0.1 (±1.4)	0.0(±1.4)	66.7 (±0.9)	0.5 (±1.3)	0.6 (±1.3)	0.1 (±1.4)	0.5 (±1.3)	0.2 (±1.4)	0.1 (±1.4)
73	166,719	127,882	115,665 (±2,883)	16.6 (±1.1)	1.2 (±0.8)	0.1 (±0.9)	0.0(±0.9)	80.6 (±1.1)	0.2 (±0.8)	0.4 (±0.8)	0.0 (±0.9)	0.6 (±0.7)	0.1 (±0.9)	0.2 (±0.9)
74	162,357	115,236	86,210 (±2,524)	69.4 (±1.5)	1.5 (±1.5)	0.1 (±1.6)	0.1(±1.6)	27.2 (±1.2)	0.5 (±1.5)	0.5 (±1.5)	0.0 (±1.6)	0.6 (±1.5)	0.1 (±1.6)	0.0 (±1.6)
75	159,691	103,209	56,790 (±1,924)	89.0 (±1.2)	1.3 (±1.3)	0.0 (±1.4)	0.0(±1.4)	8.1 (±1.1)	0.7 (±1.3)	0.6 (±1.3)	0.0 (±1.4)	0.1 (±1.4)	0.1 (±1.4)	0.1 (±1.4)
76	159,760	116,392	89,640 (±2,819)	83.5 (±3.7)	2.6 (±1.5)	0.1 (±1.5)	0.1(±1.6)	12.4 (±1.3)	0.2 (±1.5)	0.6 (±1.5)	0.1 (±1.6)	0.3 (±1.5)	0.0 (±1.5)	0.1 (±1.5)
77	159,949	113,374	80,424 (±2,231)	73.4 (±1.4)	4.3 (±1.6)	0.1 (±1.8)	0.0(±1.8)	19.7 (±1.3)	0.5 (±1.8)	1.2 (±1.6)	0.0 (±1.8)	0.4 (±1.8)	0.2 (±1.8)	0.1 (±1.8)
78	160,589	114,460	84,980 (±2,107)	55.2 (±1.7)	4.1 (±1.0)	0.1 (±1.2)	0.0(±1.2)	36.9 (±1.1)	0.5 (±1.1)	2.1 (±0.9)	0.1 (±1.2)	0.4 (±1.2)	0.4 (±1.1)	0.1 (±1.2)
79	160,658	112,399	84,155 (±2,291)	76.7 (±1.4)	3.4 (±1.0)	0.1 (±1.2)	0.0(±1.2)	18.6 (±1.0)	0.3 (±1.2)	0.6 (±1.1)	0.0 (±1.2)	0.2 (±1.2)	0.0 (±1.2)	0.0 (±1.2)
80	171,694	127,067	116,490 (±3,192)	57.4 (±1.5)	5.1 (±1.2)	0.1 (±1.2)	0.0(±1.2)	36.1 (±1.1)	0.2 (±1.2)	0.4 (±1.2)	0.1 (±1.2)	0.4 (±1.2)	0.1 (±1.2)	0.0 (±1.2)
81	169,684	120,535	101,715 (±2,406)	39.0 (±1.5)	3.8 (±1.2)	0.1 (±1.5)	0.2(±1.5)	54.8 (±1.2)	0.3 (±1.4)	0.5 (±1.4)	0.0 (±1.5)	1.1 (±1.2)	0.0 (±1.5)	0.0 (±1.5)
82	163,234	118,623	101,635 (±2,426)	28.6 (±1.4)	6.9 (±1.2)	0.2 (±1.4)	0.0(±1.4)	62.5 (±1.0)	0.5 (±1.4)	0.8 (±1.3)	0.0 (±1.4)	0.5 (±1.3)	0.0 (±1.4)	0.0 (±1.4)
83	173,918	127,906	112,005 (±2,521)	24.9 (±1.2)	5.1 (±1.1)	0.2 (±1.2)	0.0(±1.3)	68.5 (±1.0)	0.3 (±1.1)	0.3 (±1.2)	0.0 (±1.3)	0.3 (±1.1)	0.1 (±1.3)	0.1 (±1.3)
84	167,970	128,898	118,935 (±3,143)	28.0 (±1.3)	8.0 (±1.0)	0.2 (±1.2)	0.1(±1.2)	61.8 (±1.2)	0.3 (±1.2)	0.9 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
85	160,182	113,433	95,395 (±2,724)	27.5 (±1.6)	14.2 (±1.5)	0.1 (±1.2)	0.0(±1.3)	52.5 (±1.1)	0.3 (±1.2)	5.0 (±1.3)	0.0 (±1.3)	0.1 (±1.2)	0.2 (±1.2)	0.1 (±1.2)
86	165,183	121,555	106,320 (±2,394)	16.5 (±1.0)	2.0 (±1.1)	0.1 (±1.3)	0.0(±1.4)	79.2 (±1.0)	0.5 (±1.1)	0.7 (±1.2)	0.1 (±1.3)	0.7 (±1.1)	0.0 (±1.3)	0.0 (±1.4)
87	174,343	125,360	110,500 (±2,516)	21.8 (±1.2)	7.5 (±1.3)	0.2 (±1.3)	0.2(±1.4)	67.3 (±0.8)	0.9 (±1.1)	1.3 (±1.2)	0.0 (±1.4)	0.7 (±1.2)	0.1 (±1.3)	0.0 (±1.4)
88	160,896	115,622	100,995 (±2,527)	29.4 (±1.1)	4.6 (±1.4)	0.1 (±1.5)	0.0(±1.6)	64.1 (±0.6)	0.5 (±1.4)	0.3 (±1.4)	0.1 (±1.5)	0.8 (±1.3)	0.0 (±1.6)	0.0 (±1.6)
89	172,138	118,380	84,010 (±2,169)	8.9 (±1.0)	7.9 (±1.1)	0.1 (±0.9)	0.1(±1.0)	76.3 (±1.1)	0.4 (±0.9)	5.2 (±0.8)	0.1 (±1.0)	0.7 (±0.9)	0.3 (±0.8)	0.0 (±1.0)
90	159,428	105,582	67,570 (±2,347)	49.7 (±2.0)	15.6 (±2.0)	0.0 (±2.3)	0.1(±2.3)	32.5 (±1.6)	0.3 (±2.3)	1.2 (±2.2)	0.1 (±2.4)	0.4 (±2.3)	0.0 (±2.4)	0.0 (±2.3)
91	162,838	119,048	102,550 (±2,493)	10.9 (±0.9)	4.2 (±1.0)	0.0 (±1.1)	0.0(±1.1)	79.6 (±1.2)	0.5 (±1.0)	3.4 (±0.9)	0.1 (±1.1)	0.9 (±1.0)	0.3 (±1.1)	0.1 (±1.1)
92	162,326	126,290	113,260 (±2,541)	9.6 (±0.9)	8.7 (±1.1)	0.1 (±1.1)	0.1(±1.1)	75.9 (±1.0)	0.2 (±1.1)	3.7 (±0.9)	0.7 (±1.1)	0.5 (±1.0)	0.4 (±1.0)	0.1 (±1.1)
93	162,161	113,584	86,295 (±2,066)	14.8 (±1.2)	12.1 (±1.2)	0.1 (±1.1)	0.2(±1.1)	66.5 (±1.0)	0.7 (±1.0)	4.8 (±0.9)	0.2 (±1.1)	0.4 (±1.0)	0.2 (±1.0)	0.1 (±1.1)
94	167,374	125,516	114,385 (±2,485)	10.2 (±1.0)	11.1 (±1.1)	0.1 (±1.1)	0.1(±1.1)	72.9 (±0.9)	0.6 (±0.9)	3.9 (±0.9)	0.0 (±1.1)	0.8 (±0.9)	0.2 (±1.0)	0.1 (±1.1)
95	161,634	115,752	95,555 (±2,490)	12.9 (±1.1)	49.8 (±1.5)	0.1 (±1.5)	0.2(±1.5)	34.7 (±1.3)	0.4 (±1.4)	1.4 (±1.4)	0.0 (±1.5)	0.3 (±1.4)	0.1 (±1.5)	0.1 (±1.5)
96	164,930	113,924	85,405 (±1,942)	10.1 (±1.0)	16.8 (±1.2)	0.4 (±0.9)	0.1(±0.9)	68.4 (±1.2)	0.5 (±0.7)	2.6 (±0.8)	0.1 (±0.9)	0.7 (±0.7)	0.2 (±0.9)	0.1 (±0.9)
97	168,901	131,335	118,065 (±2,439)	9.8 (±1.0)	10.2 (±1.1)	0.1 (±1.2)	0.0(±1.2)	77.2 (±0.9)	0.3 (±1.0)	1.9 (±0.9)	0.0 (±1.2)	0.2 (±1.1)	0.2 (±1.1)	0.1 (±1.1)
98	164,081	114,953	102,560 (±2,041)	6.7 (±0.9)	2.7 (±0.8)	0.1 (±0.9)	0.0(±0.9)	86.0 (±0.6)	0.4 (±0.9)	3.0 (±0.7)	0.0 (±0.9)	0.5 (±0.8)	0.3 (±0.9)	0.1 (±0.9)
99	170,697	125,780	102,560 (±2,935)	14.2 (±1.2)	6.2 (±1.2)	0.0 (±1.3)	0.0(±1.3)	76.7 (±1.0)	0.7 (±1.1)	1.6 (±1.2)	0.0 (±1.3)	0.4 (±1.2)	0.2 (±1.2)	0.1 (±1.3)
100	169,339	119,598	91,865 (±3,179)	22.4 (±1.7)	51.6 (±1.4)	0.0 (±1.5)	0.2(±1.5)	23.4 (±1.8)	0.3 (±1.5)	1.0 (±1.5)	0.1 (±1.6)	0.5 (±1.5)	0.1 (±1.5)	0.3 (±1.5)
101	164,664	110,209	74,855 (±2,242)	19.7 (±1.6)	28.0 (±1.8)	0.3 (±1.3)	0.2(±1.3)	42.9 (±1.5)	0.4 (±1.2)	7.8 (±1.1)	0.0 (±1.3)	0.4 (±1.2)	0.2 (±1.2)	0.1 (±1.3)
102	168,549	124,397	98,015 (±2,449)	12.5 (±1.3)	16.7 (±1.5)	0.1 (±1.4)	0.1(±1.4)	64.8 (±0.9)	0.3 (±1.3)	4.8 (±1.2)	0.0 (±1.4)	0.5 (±1.3)	0.2 (±1.4)	0.1 (±1.4)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH299

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
103	169,261	117,014	64,260 (±2,267)	46.8 (±2.2)	9.6 (±2.0)	0.0 (±2.3)	0.1(±2.3)	39.7 (±1.5)	0.3 (±2.2)	2.6 (±2.0)	0.0 (±2.3)	0.4 (±2.2)	0.2 (±2.3)	0.1 (±2.3)
104	169,214	113,506	72,565 (±2,345)	55.6 (±2.0)	13.3 (±1.6)	0.0 (±1.9)	0.0(±1.9)	28.6 (±1.5)	0.5 (±1.7)	1.2 (±1.8)	0.1 (±1.9)	0.5 (±1.8)	0.1 (±1.9)	0.0 (±1.9)
105	169,019	121,395	88,100 (±2,337)	24.5 (±1.5)	13.6 (±1.4)	0.1 (±1.6)	0.2(±1.6)	56.3 (±1.2)	0.6 (±1.4)	4.1 (±1.2)	0.1 (±1.6)	0.4 (±1.4)	0.1 (±1.6)	0.0 (±1.6)
106	161,947	110,568	74,515 (±2,180)	8.8 (±1.1)	6.5 (±1.2)	0.2 (±0.8)	0.2(±0.8)	80.1 (±1.3)	0.3 (±0.7)	2.7 (±0.7)	0.1 (±0.9)	0.7 (±0.6)	0.2 (±0.8)	0.2 (±0.8)
107	169,080	121,770	97,305 (±2,711)	18.4 (±1.4)	14.2 (±1.3)	0.3 (±1.4)	0.1(±1.5)	63.4 (±1.5)	0.2 (±1.4)	2.7 (±1.2)	0.0 (±1.5)	0.4 (±1.3)	0.2 (±1.4)	0.1 (±1.4)
108	169,385	139,611	122,195 (±2,692)	14.0 (±1.2)	7.4 (±1.2)	0.1 (±1.3)	0.3(±1.3)	74.1 (±0.8)	0.4 (±1.3)	2.2 (±1.1)	0.2 (±1.4)	0.8 (±1.3)	0.3 (±1.3)	0.1 (±1.3)
109	168,974	117,975	103,515 (±2,735)	10.4 (±1.1)	58.7 (±1.6)	0.3 (±1.1)	0.3(±1.1)	28.2 (±1.1)	0.3 (±1.0)	1.3 (±1.0)	0.0 (±1.1)	0.3 (±1.1)	0.0 (±1.1)	0.1 (±1.1)
110	169,060	115,920	90,395 (±2,627)	18.8 (±1.6)	51.2 (±1.5)	0.1 (±1.5)	0.1(±1.5)	28.1 (±1.6)	0.2 (±1.4)	1.1 (±1.5)	0.0 (±1.5)	0.2 (±1.4)	0.0 (±1.5)	0.2 (±1.5)
111	169,394	120,759	100,850 (±2,729)	16.1 (±1.4)	50.6 (±1.5)	0.2 (±1.2)	0.2(±1.2)	30.0 (±1.2)	0.2 (±1.2)	1.6 (±1.1)	0.4 (±1.3)	0.3 (±1.2)	0.1 (±1.2)	0.4 (±1.2)
112	169,492	124,337	98,800 (±2,565)	13.9 (±1.3)	11.8 (±1.2)	0.1 (±1.3)	0.6(±1.3)	60.8 (±1.1)	0.5 (±1.1)	10.7 (±1.3)	0.0 (±1.3)	1.1 (±1.1)	0.1 (±1.3)	0.3 (±1.3)
113	169,489	119,143	96,095 (±2,516)	14.8 (±1.3)	16.2 (±1.4)	0.2 (±1.2)	0.3(±1.2)	63.9 (±1.2)	0.4 (±1.1)	3.4 (±1.1)	0.0 (±1.3)	0.5 (±1.1)	0.2 (±1.2)	0.1 (±1.2)
114	168,815	127,952	113,245 (±2,520)	10.4 (±1.2)	14.7 (±1.5)	0.1 (±1.4)	0.0(±1.4)	72.3 (±0.5)	0.2 (±1.3)	1.9 (±1.1)	0.1 (±1.4)	0.3 (±1.3)	0.0 (±1.4)	0.0 (±1.4)
115	169,068	130,499	98,950 (±2,223)	12.7 (±1.1)	11.6 (±1.1)	0.2 (±1.2)	0.1(±1.2)	66.0 (±1.0)	0.6 (±1.1)	8.1 (±1.0)	0.1 (±1.2)	0.3 (±1.1)	0.3 (±1.1)	0.1 (±1.2)
116	171,463	132,823	113,950 (±2,731)	57.1 (±1.5)	4.8 (±1.0)	0.1 (±1.1)	0.0(±1.1)	35.0 (±1.2)	0.4 (±1.1)	1.8 (±1.0)	0.0 (±1.1)	0.3 (±1.1)	0.1 (±1.1)	0.2 (±1.1)
117	171,249	116,261	71,395 (±2,128)	63.8 (±2.1)	4.6 (±1.1)	0.1 (±1.2)	0.0(±1.2)	29.4 (±1.2)	0.4 (±1.1)	1.1 (±1.1)	0.0 (±1.2)	0.3 (±1.1)	0.3 (±1.2)	0.0 (±1.2)
118	161,851	117,706	97,635 (±3,513)	64.7 (±1.7)	3.5 (±1.3)	0.2 (±1.3)	0.0(±1.3)	30.3 (±1.7)	0.2 (±1.3)	0.6 (±1.3)	0.1 (±1.3)	0.2 (±1.3)	0.1 (±1.3)	0.0 (±1.4)
119	159,981	114,477	103,575 (±2,969)	58.3 (±1.6)	8.2 (±1.2)	0.4 (±1.3)	0.1(±1.3)	30.7 (±1.1)	0.2 (±1.3)	1.2 (±1.2)	0.2 (±1.3)	0.3 (±1.3)	0.1 (±1.3)	0.3 (±1.3)
120	175,132	124,829	97,475 (±2,718)	34.1 (±1.5)	28.0 (±1.4)	0.2 (±1.4)	0.2(±1.4)	34.0 (±1.5)	0.3 (±1.4)	2.1 (±1.2)	0.2 (±1.5)	0.3 (±1.4)	0.6 (±1.4)	0.1 (±1.4)
121	174,867	133,224	117,915 (±2,606)	26.7 (±1.3)	4.9 (±1.0)	0.1 (±1.1)	0.0(±1.1)	65.2 (±1.0)	0.3 (±1.1)	1.4 (±0.9)	0.2 (±1.1)	0.5 (±1.0)	0.4 (±1.0)	0.1 (±1.1)
122	175,184	128,725	104,985 (±2,118)	23.4 (±1.3)	3.2 (±0.7)	0.0 (±0.8)	0.0(±0.8)	69.0 (±0.8)	0.2 (±0.7)	3.0 (±0.6)	0.0 (±0.8)	0.5 (±0.7)	0.2 (±0.7)	0.3 (±0.7)
123	175,674	135,763	116,365 (±3,176)	62.3 (±1.6)	4.1 (±1.3)	0.1 (±1.4)	0.0(±1.4)	31.7 (±1.2)	0.6 (±1.4)	0.6 (±1.3)	0.0 (±1.4)	0.3 (±1.4)	0.1 (±1.4)	0.0 (±1.4)
124	174,823	120,521	103,955 (±2,639)	62.4 (±1.6)	8.8 (±1.0)	0.3 (±0.9)	0.1(±1.0)	25.2 (±1.1)	0.8 (±0.9)	1.6 (±0.8)	0.1 (±1.0)	0.2 (±0.9)	0.3 (±0.9)	0.1 (±0.9)
125	174,549	125,158	104,260 (±3,886)	64.3 (±1.2)	5.2 (±1.2)	0.1 (±1.2)	0.1(±1.2)	28.2 (±2.0)	0.2 (±1.2)	1.3 (±1.1)	0.2 (±1.3)	0.2 (±1.2)	0.2 (±1.2)	0.1 (±1.2)
126	170,601	124,072	90,960 (±2,526)	21.2 (±1.5)	14.0 (±1.3)	0.1 (±1.1)	0.0(±1.1)	55.5 (±1.2)	0.3 (±1.1)	8.0 (±1.0)	0.2 (±1.1)	0.4 (±1.0)	0.2 (±1.0)	0.0 (±1.1)
127	170,606	120,218	107,000 (±2,429)	13.9 (±1.1)	12.4 (±1.2)	0.0 (±0.8)	0.1(±0.8)	70.0 (±1.2)	0.3 (±0.8)	2.5 (±0.7)	0.3 (±0.8)	0.2 (±0.8)	0.2 (±0.8)	0.1 (±0.8)
128	170,178	121,503	102,130 (±2,572)	17.0 (±1.1)	10.0 (±1.2)	0.1 (±1.3)	0.0(±1.3)	70.8 (±1.1)	0.5 (±1.2)	1.2 (±1.2)	0.0 (±1.3)	0.4 (±1.2)	0.0 (±1.3)	0.1 (±1.3)
129	170,629	128,215	109,160 (±2,593)	15.4 (±1.2)	8.7 (±1.0)	0.1 (±1.0)	0.0(±1.0)	67.9 (±1.1)	0.3 (±0.9)	6.6 (±0.8)	0.2 (±1.0)	0.4 (±0.9)	0.2 (±0.9)	0.2 (±0.9)
130	170,422	117,974	86,840 (±1,986)	12.6 (±1.1)	7.1 (±0.9)	0.0 (±0.9)	0.1(±0.9)	74.7 (±1.1)	0.3 (±0.7)	4.4 (±0.8)	0.0 (±0.9)	0.6 (±0.7)	0.1 (±0.8)	0.1 (±0.8)
131	170,733	118,333	82,880 (±2,624)	23.8 (±1.8)	54.9 (±1.7)	0.2 (±1.3)	0.0(±1.3)	15.4 (±1.2)	0.1 (±1.3)	5.1 (±1.3)	0.0 (±1.3)	0.1 (±1.3)	0.0 (±1.3)	0.1 (±1.3)
132	170,933	115,713	80,050 (±1,933)	19.8 (±1.4)	11.8 (±1.1)	0.2 (±0.8)	0.0(±0.9)	62.0 (±1.2)	0.3 (±0.8)	5.4 (±0.8)	0.0 (±0.9)	0.3 (±0.8)	0.2 (±0.8)	0.0 (±0.9)
133	170,494	134,460	118,020 (±2,510)	9.3 (±0.9)	10.7 (±1.1)	0.1 (±1.0)	0.0(±1.0)	73.1 (±0.9)	0.2 (±1.0)	6.1 (±0.8)	0.1 (±1.0)	0.2 (±1.0)	0.2 (±1.0)	0.0 (±1.0)
134	170,062	139,411	127,300 (±2,734)	11.5 (±1.0)	4.4 (±1.0)	0.1 (±1.1)	0.0(±1.1)	77.6 (±0.8)	0.2 (±1.1)	5.5 (±0.8)	0.1 (±1.1)	0.3 (±1.1)	0.2 (±1.1)	0.1 (±1.1)
135	170,017	120,016	80,970 (±2,014)	19.3 (±1.4)	12.4 (±1.2)	0.0 (±0.9)	0.0(±0.9)	57.7 (±1.4)	0.4 (±0.8)	9.5 (±1.0)	0.0 (±0.9)	0.3 (±0.8)	0.1 (±0.8)	0.1 (±0.9)
136	164,376	116,361	98,445 (±2,528)	12.9 (±1.1)	4.4 (±0.8)	0.0 (±0.8)	0.1(±0.8)	77.4 (±1.2)	0.4 (±0.7)	3.8 (±0.7)	0.1 (±0.8)	0.5 (±0.8)	0.3 (±0.7)	0.1 (±0.8)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH299

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
137	170,006	126,263	65,625 (±2,324)	23.8 (±1.9)	25.6 (±2.1)	0.0 (±1.6)	0.0(±1.6)	38.2 (±1.4)	0.5 (±1.6)	11.6 (±1.3)	0.0 (±1.6)	0.2 (±1.5)	0.1 (±1.6)	0.0 (±1.6)
138	170,924	123,612	88,225 (±2,574)	20.6 (±1.4)	10.5 (±1.3)	0.1 (±1.1)	0.1(±1.1)	62.0 (±1.1)	0.2 (±1.1)	5.9 (±0.9)	0.0 (±1.2)	0.4 (±1.0)	0.2 (±1.0)	0.1 (±1.1)
139	171,403	121,634	97,760 (±2,679)	18.2 (±1.3)	49.2 (±1.7)	0.2 (±1.1)	0.1(±1.2)	28.3 (±1.2)	0.2 (±1.1)	3.5 (±1.0)	0.1 (±1.2)	0.1 (±1.2)	0.1 (±1.2)	0.1 (±1.2)
140	170,730	112,528	62,255 (±2,426)	57.1 (±2.4)	17.7 (±1.9)	0.0 (±1.8)	0.0(±1.8)	22.0 (±1.4)	0.1 (±1.7)	3.0 (±1.7)	0.0 (±1.8)	0.1 (±1.8)	0.0 (±1.8)	0.0 (±1.8)
141	171,201	118,046	85,025 (±3,048)	18.9 (±1.2)	56.2 (±1.6)	0.4 (±1.2)	0.1(±1.3)	21.5 (±1.6)	0.2 (±1.2)	1.7 (±1.2)	0.5 (±1.3)	0.1 (±1.3)	0.1 (±1.3)	0.2 (±1.3)
142	170,992	118,927	83,375 (±2,595)	21.0 (±1.5)	53.4 (±1.9)	0.1 (±1.5)	0.0(±1.5)	23.8 (±1.6)	0.2 (±1.4)	1.1 (±1.4)	0.1 (±1.5)	0.1 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
143	170,138	114,167	77,600 (±2,630)	54.0 (±2.0)	17.3 (±1.9)	0.0 (±1.6)	0.0(±1.6)	26.7 (±1.6)	0.7 (±1.6)	1.1 (±1.5)	0.0 (±1.6)	0.2 (±1.5)	0.0 (±1.6)	0.0 (±1.6)
144	170,556	120,317	101,295 (±2,379)	26.5 (±1.3)	2.5 (±1.0)	0.0 (±1.1)	0.0(±1.1)	66.0 (±1.3)	0.3 (±1.0)	3.7 (±1.1)	0.1 (±1.1)	0.6 (±1.0)	0.2 (±1.1)	0.1 (±1.1)
145	170,057	122,115	88,620 (±2,734)	53.5 (±1.7)	7.5 (±1.4)	0.1 (±1.5)	0.0(±1.5)	35.8 (±1.4)	0.2 (±1.5)	2.2 (±1.3)	0.0 (±1.5)	0.5 (±1.4)	0.1 (±1.5)	0.1 (±1.5)
146	170,944	127,810	97,520 (±2,851)	11.3 (±1.2)	53.1 (±1.7)	0.1 (±1.3)	0.2(±1.3)	29.1 (±1.4)	0.1 (±1.3)	5.7 (±1.1)	0.1 (±1.3)	0.1 (±1.3)	0.1 (±1.3)	0.1 (±1.3)
147	169,570	131,129	105,560 (±4,472)	17.8 (±1.2)	47.0 (±1.3)	0.0 (±1.3)	0.1(±1.3)	31.1 (±1.9)	0.2 (±1.3)	3.4 (±1.2)	0.1 (±1.3)	0.2 (±1.3)	0.1 (±1.2)	0.0 (±1.3)
148	170,364	124,909	83,645 (±2,647)	54.5 (±2.0)	11.3 (±1.4)	0.1 (±1.6)	0.0(±1.6)	32.6 (±1.4)	0.3 (±1.6)	0.8 (±1.4)	0.0 (±1.6)	0.3 (±1.6)	0.1 (±1.6)	0.1 (±1.6)
149	170,226	122,322	83,030 (±3,242)	19.8 (±1.5)	31.4 (±1.7)	0.3 (±1.0)	0.0(±1.1)	31.7 (±2.4)	0.3 (±1.0)	16.0 (±1.2)	0.0 (±1.1)	0.3 (±1.1)	0.3 (±1.0)	0.2 (±1.1)
150	170,673	120,930	90,615 (±2,237)	11.0 (±1.0)	10.5 (±1.2)	0.2 (±0.9)	0.1(±0.9)	73.2 (±1.0)	0.2 (±0.9)	3.9 (±0.7)	0.0 (±1.0)	0.4 (±0.8)	0.3 (±0.8)	0.1 (±0.9)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH283

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
1	165,823	125,927	120,660 (±2,890)	3.1 (±0.9)	17.8 (±1.3)	0.4 (±1.3)	0.2(±1.2)	76.5 (±0.9)	0.8 (±1.1)	0.3 (±1.2)	0.1 (±1.2)	0.6 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
2	173,869	130,806	119,950 (±2,981)	5.3 (±0.7)	6.9 (±0.9)	0.0 (±1.2)	0.0(±1.2)	86.0 (±1.0)	0.6 (±1.0)	0.2 (±1.1)	0.1 (±1.2)	0.6 (±1.0)	0.0 (±1.2)	0.0 (±1.2)
3	164,955	119,595	92,595 (±2,720)	9.7 (±1.1)	9.8 (±1.4)	0.1 (±1.0)	0.0(±1.0)	78.7 (±1.0)	0.3 (±0.9)	0.5 (±1.0)	0.0 (±1.0)	0.7 (±0.8)	0.1 (±1.0)	0.1 (±1.0)
4	168,429	123,603	110,850 (±2,711)	6.3 (±0.8)	8.7 (±1.0)	0.1 (±1.0)	0.0(±1.0)	83.1 (±0.8)	0.6 (±0.9)	0.4 (±0.9)	0.1 (±1.0)	0.5 (±0.8)	0.1 (±1.0)	0.0 (±1.0)
5	160,253	120,169	103,245 (±3,376)	5.2 (±0.8)	10.9 (±2.0)	0.1 (±1.2)	0.2(±1.2)	82.0 (±3.6)	0.7 (±1.0)	0.3 (±1.1)	0.0 (±1.3)	0.5 (±1.1)	0.0 (±1.2)	0.1 (±1.2)
6	160,008	119,154	106,645 (±2,591)	6.5 (±0.9)	20.7 (±1.2)	0.1 (±1.1)	0.0(±1.2)	71.3 (±1.0)	0.3 (±1.1)	0.5 (±1.0)	0.0 (±1.2)	0.3 (±1.1)	0.2 (±1.1)	0.1 (±1.2)
7	161,039	120,296	107,240 (±3,065)	3.9 (±0.7)	17.3 (±1.2)	0.1 (±1.3)	0.2(±1.3)	76.6 (±1.2)	0.5 (±1.2)	0.7 (±1.2)	0.1 (±1.3)	0.6 (±1.2)	0.0 (±1.3)	0.0 (±1.3)
8	161,098	123,550	113,660 (±3,281)	8.8 (±0.9)	18.0 (±1.5)	0.1 (±1.2)	0.1(±1.2)	71.8 (±2.9)	0.4 (±1.1)	0.4 (±1.2)	0.1 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.0 (±1.2)
9	166,719	125,947	118,475 (±2,997)	2.5 (±1.0)	19.6 (±1.4)	0.1 (±1.2)	0.0(±1.3)	76.7 (±0.8)	0.3 (±1.2)	0.2 (±1.2)	0.0 (±1.3)	0.5 (±1.1)	0.0 (±1.3)	0.0 (±1.3)
10	163,063	116,978	104,675 (±2,403)	13.1 (±1.0)	9.0 (±1.0)	0.1 (±1.1)	0.0(±1.1)	76.1 (±0.8)	0.5 (±1.0)	0.5 (±1.0)	0.1 (±1.1)	0.4 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
11	168,699	128,086	111,890 (±3,219)	5.7 (±0.8)	17.4 (±1.0)	0.1 (±1.2)	0.0(±1.2)	75.3 (±1.2)	0.4 (±1.1)	0.4 (±1.1)	0.0 (±1.2)	0.5 (±1.1)	0.2 (±1.2)	0.0 (±1.2)
12	160,573	119,556	100,440 (±2,564)	11.8 (±1.0)	21.4 (±1.4)	0.1 (±1.4)	0.1(±1.4)	65.1 (±1.1)	0.3 (±1.3)	0.6 (±1.3)	0.0 (±1.4)	0.5 (±1.2)	0.1 (±1.4)	0.1 (±1.4)
13	170,617	131,129	117,085 (±2,640)	9.5 (±0.9)	12.7 (±1.1)	0.1 (±1.3)	0.0(±1.3)	76.8 (±0.9)	0.1 (±1.3)	0.3 (±1.2)	0.0 (±1.3)	0.4 (±1.2)	0.0 (±1.3)	0.0 (±1.3)
14	163,187	131,479	103,475 (±2,991)	14.1 (±1.0)	10.0 (±1.0)	0.2 (±1.1)	0.1(±1.1)	72.7 (±1.4)	0.3 (±1.0)	1.9 (±0.9)	0.0 (±1.1)	0.4 (±1.0)	0.1 (±1.1)	0.1 (±1.1)
15	167,349	120,450	99,910 (±2,294)	7.4 (±0.8)	4.1 (±0.8)	0.1 (±0.8)	0.0(±0.9)	84.9 (±0.9)	0.3 (±0.8)	2.1 (±0.6)	0.0 (±0.9)	0.8 (±0.7)	0.1 (±0.8)	0.2 (±0.8)
16	166,647	122,271	100,140 (±2,737)	9.3 (±1.0)	5.8 (±1.1)	0.1 (±1.0)	0.0(±1.0)	83.0 (±1.0)	0.4 (±0.9)	0.8 (±0.9)	0.0 (±1.0)	0.5 (±0.8)	0.1 (±1.0)	0.0 (±1.0)
17	163,480	121,295	109,290 (±3,445)	27.0 (±1.5)	9.6 (±1.2)	0.1 (±1.1)	0.0(±1.1)	62.2 (±1.2)	0.3 (±1.1)	0.3 (±1.1)	0.1 (±1.1)	0.4 (±1.0)	0.0 (±1.1)	0.0 (±1.1)
18	169,888	132,877	119,850 (±4,391)	8.1 (±1.0)	18.2 (±1.2)	0.0 (±1.1)	0.0(±1.1)	72.3 (±1.1)	0.4 (±1.0)	0.3 (±1.0)	0.1 (±1.1)	0.5 (±1.0)	0.1 (±1.0)	0.1 (±1.0)
19	171,969	131,682	124,465 (±2,849)	3.7 (±0.8)	12.2 (±1.0)	0.1 (±1.1)	0.1(±1.1)	82.6 (±0.9)	0.5 (±1.0)	0.2 (±1.0)	0.1 (±1.1)	0.6 (±1.0)	0.0 (±1.1)	0.0 (±1.1)
20	159,816	121,754	100,810 (±2,573)	10.3 (±1.0)	3.4 (±0.9)	0.0 (±1.1)	0.0(±1.1)	84.6 (±0.8)	0.4 (±1.0)	0.5 (±1.0)	0.1 (±1.1)	0.4 (±0.9)	0.1 (±1.1)	0.0 (±1.1)
21	172,180	130,308	122,140 (±2,627)	5.2 (±0.8)	7.4 (±1.2)	0.1 (±1.2)	0.0(±1.2)	85.1 (±0.8)	0.5 (±1.1)	1.2 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.0 (±1.2)
22	161,930	122,897	108,385 (±3,480)	7.7 (±1.1)	51.3 (±2.1)	0.2 (±1.4)	0.1(±1.4)	38.3 (±1.0)	0.3 (±1.4)	1.6 (±1.2)	0.1 (±1.4)	0.3 (±1.3)	0.1 (±1.4)	0.0 (±1.4)
23	163,720	123,736	115,770 (±2,837)	16.6 (±1.1)	20.3 (±1.3)	0.2 (±1.3)	0.0(±1.4)	60.7 (±1.1)	0.4 (±1.2)	1.1 (±1.2)	0.0 (±1.4)	0.4 (±1.2)	0.0 (±1.4)	0.1 (±1.3)
24	162,685	118,491	98,615 (±2,321)	11.3 (±1.0)	7.4 (±1.1)	0.1 (±1.1)	0.0(±1.1)	77.5 (±0.9)	0.4 (±1.0)	2.6 (±0.9)	0.0 (±1.1)	0.5 (±0.9)	0.2 (±1.0)	0.0 (±1.1)
25	174,168	129,041	116,795 (±2,903)	20.8 (±1.1)	12.0 (±1.1)	0.1 (±1.3)	0.0(±1.3)	64.7 (±1.0)	0.6 (±1.2)	1.8 (±1.2)	0.0 (±1.3)	0.6 (±1.2)	0.1 (±1.3)	0.1 (±1.3)
26	160,091	117,247	85,950 (±2,456)	11.6 (±1.1)	10.6 (±1.2)	0.0 (±1.0)	0.0(±1.1)	57.3 (±1.5)	0.4 (±1.0)	19.6 (±1.7)	0.0 (±1.1)	0.2 (±1.0)	0.2 (±1.0)	0.1 (±1.0)
27	160,084	113,596	92,920 (±2,776)	14.8 (±1.5)	44.3 (±1.8)	0.1 (±1.0)	0.2(±1.0)	30.8 (±1.3)	0.3 (±0.9)	9.0 (±1.1)	0.0 (±1.0)	0.2 (±1.0)	0.1 (±1.0)	0.1 (±1.0)
28	160,373	107,968	68,830 (±2,086)	15.6 (±1.5)	14.2 (±1.6)	0.1 (±0.9)	0.0(±0.9)	58.9 (±1.2)	0.1 (±0.8)	10.4 (±1.2)	0.0 (±0.9)	0.3 (±0.7)	0.2 (±0.8)	0.1 (±0.9)
29	175,700	124,171	100,500 (±2,364)	17.4 (±1.3)	10.3 (±1.1)	0.1 (±0.9)	0.1(±0.9)	65.8 (±1.3)	0.1 (±1.0)	5.8 (±0.9)	0.0 (±1.0)	0.3 (±0.9)	0.1 (±0.9)	0.1 (±0.9)
30	166,022	124,729	116,955 (±2,661)	31.8 (±1.3)	5.5 (±1.0)	0.1 (±1.2)	0.0(±1.2)	60.8 (±1.0)	0.1 (±1.2)	1.0 (±1.2)	0.0 (±1.2)	0.6 (±1.0)	0.1 (±1.2)	0.1 (±1.2)
31	168,636	104,939	56,380 (±2,420)	88.9 (±1.7)	1.3 (±1.5)	0.1 (±1.6)	0.0(±1.6)	9.3 (±1.3)	0.1 (±1.6)	0.1 (±1.6)	0.0 (±1.6)	0.2 (±1.6)	0.0 (±1.6)	0.0 (±1.6)
32	167,074	126,072	107,900 (±2,899)	44.2 (±1.5)	4.2 (±1.1)	0.0 (±1.2)	0.0(±1.2)	49.1 (±1.3)	0.4 (±1.1)	1.2 (±1.0)	0.0 (±1.2)	0.6 (±1.1)	0.2 (±1.2)	0.1 (±1.2)
33	172,135	119,518	109,865 (±2,261)	8.5 (±0.8)	5.9 (±0.8)	0.1 (±0.6)	0.1(±0.7)	81.2 (±0.9)	0.4 (±0.5)	2.7 (±0.6)	0.1 (±0.6)	0.5 (±0.5)	0.3 (±0.6)	0.1 (±0.6)
34	173,149	125,896	112,345 (±2,961)	64.6 (±1.6)	3.7 (±1.1)	0.0 (±1.3)	0.0(±1.3)	30.5 (±1.1)	0.2 (±1.3)	0.6 (±1.2)	0.0 (±1.3)	0.4 (±1.3)	0.0 (±1.3)	0.0 (±1.3)

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Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH283

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
35	172,482	127,314	121,925 (±3,289)	52.5 (±1.5)	4.2 (±1.1)	0.1 (±1.1)	0.0(±1.1)	42.0 (±1.1)	0.3 (±1.1)	0.4 (±1.1)	0.0 (±1.1)	0.5 (±1.0)	0.0 (±1.1)	0.0 (±1.1)
36	172,005	111,643	67,940 (±2,483)	88.7 (±1.4)	0.3 (±1.4)	0.0 (±1.5)	0.0(±1.5)	10.1 (±1.1)	0.3 (±1.5)	0.4 (±1.4)	0.0 (±1.5)	0.1 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
37	169,364	114,145	75,240 (±2,157)	82.3 (±1.4)	0.3 (±1.8)	0.1 (±1.8)	0.1(±1.8)	16.7 (±1.3)	0.2 (±1.8)	0.3 (±1.7)	0.1 (±1.8)	0.1 (±1.8)	0.0 (±1.8)	0.0 (±1.8)
38	167,793	110,065	78,985 (±2,392)	80.6 (±1.5)	0.3 (±1.4)	0.0 (±1.5)	0.2(±1.5)	18.0 (±1.3)	0.2 (±1.4)	0.6 (±1.3)	0.0 (±1.5)	0.1 (±1.4)	0.0 (±1.4)	0.0 (±1.5)
39	175,383	114,761	74,275 (±2,517)	82.4 (±1.6)	0.4 (±1.5)	0.0 (±1.5)	0.1(±1.5)	16.5 (±1.3)	0.3 (±1.4)	0.4 (±1.4)	0.0 (±1.5)	0.0 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
40	173,493	112,756	69,900 (±2,503)	89.0 (±1.3)	0.6 (±1.3)	0.0 (±1.4)	0.0(±1.4)	9.5 (±1.1)	0.1 (±1.4)	0.5 (±1.3)	0.0 (±1.4)	0.3 (±1.4)	0.0 (±1.4)	0.1 (±1.4)
41	160,238	111,689	79,770 (±2,614)	72.1 (±1.9)	0.9 (±1.1)	0.1 (±1.2)	0.0(±1.2)	25.3 (±1.1)	0.2 (±1.2)	1.2 (±1.0)	0.0 (±1.2)	0.1 (±1.2)	0.1 (±1.2)	0.0 (±1.2)
42	160,814	107,148	78,675 (±2,262)	91.1 (±0.9)	0.5 (±1.4)	0.0 (±1.4)	0.0(±1.4)	7.7 (±1.1)	0.1 (±1.4)	0.4 (±1.3)	0.0 (±1.4)	0.1 (±1.4)	0.0 (±1.4)	0.0 (±1.4)
43	171,735	122,636	105,445 (±3,062)	71.7 (±1.6)	1.6 (±1.1)	0.0 (±1.3)	0.0(±1.3)	25.8 (±1.2)	0.2 (±1.2)	0.3 (±1.2)	0.0 (±1.3)	0.2 (±1.2)	0.0 (±1.2)	0.0 (±1.3)
44	174,451	126,713	105,630 (±2,380)	29.7 (±1.5)	4.8 (±0.8)	0.1 (±1.0)	0.0(±1.0)	63.2 (±1.1)	0.4 (±0.9)	1.0 (±0.9)	0.1 (±1.0)	0.3 (±0.9)	0.2 (±1.0)	0.1 (±1.0)
45	167,604	126,549	109,060 (±3,158)	25.5 (±1.5)	4.1 (±0.9)	0.0 (±0.9)	0.0(±0.9)	68.4 (±1.1)	0.5 (±0.8)	1.0 (±0.8)	0.0 (±1.0)	0.3 (±0.8)	0.1 (±0.9)	0.0 (±0.9)
46	166,410	118,539	81,745 (±2,659)	24.6 (±1.8)	28.6 (±1.7)	0.2 (±1.3)	0.2(±1.3)	42.2 (±1.4)	0.6 (±1.3)	2.8 (±1.3)	0.0 (±1.4)	0.3 (±1.3)	0.2 (±1.3)	0.2 (±1.3)
47	175,314	127,689	116,795 (±2,272)	12.3 (±0.9)	2.0 (±0.6)	0.2 (±0.7)	0.0(±0.8)	80.5 (±0.8)	0.3 (±0.7)	3.6 (±0.5)	0.1 (±0.8)	0.6 (±0.6)	0.4 (±0.6)	0.0 (±0.8)
48	173,008	135,585	112,175 (±2,131)	16.7 (±1.0)	2.2 (±0.9)	0.1 (±1.1)	0.0(±1.1)	77.5 (±0.9)	0.3 (±1.0)	2.6 (±0.8)	0.0 (±1.1)	0.2 (±1.0)	0.3 (±1.0)	0.1 (±1.1)
49	167,309	144,371	120,915 (±3,933)	14.3 (±1.0)	4.7 (±1.1)	0.2 (±1.2)	0.0(±1.2)	75.1 (±0.8)	0.3 (±1.2)	4.2 (±1.0)	0.0 (±1.2)	0.6 (±1.1)	0.6 (±1.1)	0.1 (±1.2)
50	166,516	124,252	99,900 (±2,841)	17.7 (±1.3)	10.8 (±1.1)	0.2 (±0.9)	0.0(±1.0)	63.5 (±1.2)	0.2 (±1.0)	6.4 (±0.8)	0.0 (±1.0)	0.6 (±0.8)	0.4 (±0.9)	0.2 (±1.0)
51	175,709	128,793	86,740 (±2,646)	44.0 (±1.8)	12.3 (±1.2)	0.1 (±1.3)	0.0(±1.4)	40.5 (±1.5)	0.1 (±1.3)	1.9 (±1.2)	0.1 (±1.4)	0.6 (±1.3)	0.3 (±1.3)	0.0 (±1.4)
52	165,994	114,146	95,865 (±2,515)	19.6 (±1.5)	9.6 (±1.1)	0.1 (±0.9)	0.1(±0.9)	66.9 (±1.3)	0.3 (±0.8)	2.5 (±0.8)	0.0 (±0.9)	0.3 (±0.8)	0.3 (±0.8)	0.2 (±0.9)
53	162,897	127,381	115,000 (±2,758)	23.1 (±1.2)	1.1 (±1.1)	0.1 (±1.2)	0.0(±1.2)	74.2 (±1.0)	0.5 (±1.1)	0.3 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
54	167,736	117,164	92,035 (±2,637)	15.8 (±1.3)	22.2 (±1.6)	0.5 (±1.0)	0.1(±1.1)	56.1 (±1.3)	0.7 (±0.9)	2.6 (±0.8)	0.6 (±1.1)	0.4 (±1.0)	0.5 (±0.9)	0.5 (±1.0)
55	162,176	119,755	107,090 (±2,880)	14.9 (±1.1)	16.4 (±1.2)	0.4 (±1.1)	0.0(±1.2)	64.9 (±0.9)	0.5 (±1.1)	1.7 (±1.0)	0.2 (±1.2)	0.6 (±1.1)	0.4 (±1.1)	0.2 (±1.2)
56	163,869	123,411	112,635 (±2,760)	12.4 (±1.0)	10.0 (±1.1)	0.2 (±1.1)	0.0(±1.1)	74.9 (±1.0)	0.3 (±1.0)	1.4 (±1.0)	0.0 (±1.1)	0.5 (±1.0)	0.2 (±1.1)	0.1 (±1.1)
57	164,418	124,630	111,875 (±2,779)	7.2 (±1.0)	17.0 (±1.2)	0.1 (±1.2)	0.0(±1.2)	74.5 (±0.9)	0.2 (±1.1)	0.4 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.0 (±1.2)	0.0 (±1.2)
58	169,146	123,826	115,500 (±2,749)	8.7 (±0.9)	3.3 (±1.0)	0.1 (±1.1)	0.0(±1.1)	86.0 (±0.9)	0.7 (±1.0)	0.4 (±1.1)	0.2 (±1.1)	0.5 (±0.9)	0.1 (±1.1)	0.0 (±1.1)
59	163,609	122,193	113,535 (±3,171)	11.4 (±0.9)	10.5 (±1.7)	0.3 (±1.2)	0.0(±1.2)	75.2 (±0.7)	0.5 (±1.1)	0.9 (±1.1)	0.1 (±1.2)	0.6 (±1.1)	0.4 (±1.2)	0.1 (±1.2)
60	171,429	131,870	123,985 (±2,749)	9.2 (±0.9)	2.3 (±1.1)	0.1 (±1.2)	0.1(±1.3)	86.9 (±0.5)	0.7 (±1.1)	0.2 (±1.2)	0.0 (±1.2)	0.4 (±1.1)	0.0 (±1.2)	0.0 (±1.2)
61	176,054	130,782	117,645 (±2,911)	6.0 (±0.7)	2.2 (±0.9)	0.1 (±0.9)	0.0(±0.9)	89.9 (±0.7)	0.6 (±0.7)	0.3 (±0.8)	0.1 (±0.9)	0.7 (±0.7)	0.1 (±0.9)	0.1 (±0.9)
62	160,023	122,203	113,650 (±2,711)	4.2 (±0.9)	6.3 (±1.0)	0.1 (±1.3)	0.0(±1.3)	86.9 (±0.7)	1.1 (±1.1)	0.3 (±1.2)	0.0 (±1.3)	0.9 (±1.1)	0.1 (±1.3)	0.0 (±1.3)
63	167,337	115,634	104,695 (±2,433)	8.0 (±0.9)	4.5 (±0.8)	0.1 (±0.7)	0.2(±0.7)	83.8 (±0.9)	0.2 (±0.5)	2.3 (±0.6)	0.0 (±0.7)	0.6 (±0.5)	0.2 (±0.6)	0.1 (±0.7)
64	167,588	129,175	113,745 (±3,750)	10.1 (±0.9)	8.2 (±0.9)	0.2 (±0.8)	0.3(±0.9)	77.8 (±1.3)	0.3 (±0.7)	1.5 (±0.8)	0.0 (±0.9)	1.2 (±0.7)	0.2 (±0.8)	0.1 (±0.9)
65	165,742	124,977	104,365 (±2,714)	9.8 (±1.1)	10.9 (±1.2)	0.2 (±0.9)	0.1(±0.9)	70.6 (±1.3)	0.3 (±0.8)	6.9 (±1.0)	0.1 (±0.9)	0.7 (±0.8)	0.2 (±0.8)	0.2 (±0.9)
66	172,129	130,796	114,130 (±2,415)	6.0 (±0.8)	7.9 (±1.1)	0.1 (±1.0)	0.0(±1.1)	74.9 (±1.1)	0.5 (±1.0)	9.7 (±0.9)	0.1 (±1.0)	0.3 (±1.0)	0.3 (±1.0)	0.2 (±1.0)
67	172,141	126,368	113,715 (±2,340)	7.5 (±0.8)	6.2 (±1.0)	0.1 (±1.1)	0.0(±1.1)	76.0 (±1.0)	0.6 (±1.0)	8.8 (±0.9)	0.1 (±1.1)	0.4 (±1.0)	0.2 (±1.0)	0.1 (±1.1)
68	160,508	121,547	110,960 (±2,268)	12.8 (±0.9)	4.5 (±1.2)	0.2 (±1.4)	0.0(±1.5)	80.8 (±0.8)	0.5 (±1.3)	0.3 (±1.4)	0.0 (±1.5)	0.9 (±1.3)	0.0 (±1.5)	0.0 (±1.5)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH283

2010 Census			Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
69	160,087	123,063	114,910 (±2,286)	9.7 (±0.8)	9.1 (±1.1)	0.1 (±1.3)	0.0(±1.3)	77.8 (±0.8)	0.7 (±1.1)	1.5 (±1.1)	0.0 (±1.3)	0.8 (±1.1)	0.1 (±1.3)	0.1 (±1.2)
70	172,135	117,432	85,105 (±2,132)	10.0 (±1.1)	8.2 (±1.0)	0.1 (±0.9)	0.0(±0.9)	78.1 (±1.0)	0.4 (±0.7)	2.5 (±0.8)	0.0 (±0.9)	0.5 (±0.7)	0.2 (±0.9)	0.0 (±0.9)
71	166,924	127,097	117,980 (±2,586)	17.9 (±1.0)	6.9 (±1.0)	0.1 (±1.3)	0.0(±1.3)	72.8 (±0.8)	0.4 (±1.2)	1.0 (±1.2)	0.1 (±1.3)	0.5 (±1.2)	0.2 (±1.3)	0.1 (±1.3)
72	170,479	130,771	113,985 (±2,708)	27.6 (±1.3)	3.6 (±1.2)	0.1 (±1.4)	0.0(±1.4)	66.7 (±0.9)	0.5 (±1.3)	0.6 (±1.3)	0.1 (±1.4)	0.5 (±1.3)	0.2 (±1.4)	0.1 (±1.4)
73	166,719	127,882	115,665 (±2,883)	16.6 (±1.1)	1.2 (±0.8)	0.1 (±0.9)	0.0(±0.9)	80.6 (±1.1)	0.2 (±0.8)	0.4 (±0.8)	0.0 (±0.9)	0.6 (±0.7)	0.1 (±0.9)	0.2 (±0.9)
74	162,357	115,236	86,210 (±2,524)	69.4 (±1.5)	1.5 (±1.5)	0.1 (±1.6)	0.1(±1.6)	27.2 (±1.2)	0.5 (±1.5)	0.5 (±1.5)	0.0 (±1.6)	0.6 (±1.5)	0.1 (±1.6)	0.0 (±1.6)
75	159,691	103,209	56,790 (±1,924)	89.0 (±1.2)	1.3 (±1.3)	0.0 (±1.4)	0.0(±1.4)	8.1 (±1.1)	0.7 (±1.3)	0.6 (±1.3)	0.0 (±1.4)	0.1 (±1.4)	0.1 (±1.4)	0.1 (±1.4)
76	159,760	116,392	89,640 (±2,819)	83.5 (±3.7)	2.6 (±1.5)	0.1 (±1.5)	0.1(±1.6)	12.4 (±1.3)	0.2 (±1.5)	0.6 (±1.5)	0.1 (±1.6)	0.3 (±1.5)	0.0 (±1.5)	0.1 (±1.5)
77	159,949	113,374	80,424 (±2,231)	73.4 (±1.4)	4.3 (±1.6)	0.1 (±1.8)	0.0(±1.8)	19.7 (±1.3)	0.5 (±1.8)	1.2 (±1.6)	0.0 (±1.8)	0.4 (±1.8)	0.2 (±1.8)	0.1 (±1.8)
78	160,589	114,460	84,980 (±2,107)	55.2 (±1.7)	4.1 (±1.0)	0.1 (±1.2)	0.0(±1.2)	36.9 (±1.1)	0.5 (±1.1)	2.1 (±0.9)	0.1 (±1.2)	0.4 (±1.2)	0.4 (±1.1)	0.1 (±1.2)
79	160,658	112,399	84,155 (±2,291)	76.7 (±1.4)	3.4 (±1.0)	0.1 (±1.2)	0.0(±1.2)	18.6 (±1.0)	0.3 (±1.2)	0.6 (±1.1)	0.0 (±1.2)	0.2 (±1.2)	0.0 (±1.2)	0.0 (±1.2)
80	160,085	105,502	69,175 (±2,289)	79.7 (±1.6)	0.9 (±1.4)	0.0 (±1.5)	0.0(±1.5)	18.8 (±1.3)	0.2 (±1.5)	0.3 (±1.4)	0.0 (±1.5)	0.1 (±1.5)	0.0 (±1.5)	0.0 (±1.5)
81	169,684	120,535	101,715 (±2,406)	39.0 (±1.5)	3.8 (±1.2)	0.1 (±1.5)	0.2(±1.5)	54.8 (±1.2)	0.3 (±1.4)	0.5 (±1.4)	0.0 (±1.5)	1.1 (±1.2)	0.0 (±1.5)	0.0 (±1.5)
82	163,234	118,623	101,635 (±2,426)	28.6 (±1.4)	6.9 (±1.2)	0.2 (±1.4)	0.0(±1.4)	62.5 (±1.0)	0.5 (±1.4)	0.8 (±1.3)	0.0 (±1.4)	0.5 (±1.3)	0.0 (±1.4)	0.0 (±1.4)
83	173,918	127,906	112,005 (±2,521)	24.9 (±1.2)	5.1 (±1.1)	0.2 (±1.2)	0.0(±1.3)	68.5 (±1.0)	0.3 (±1.1)	0.3 (±1.2)	0.0 (±1.3)	0.3 (±1.1)	0.1 (±1.3)	0.1 (±1.3)
84	167,970	128,898	118,935 (±3,143)	28.0 (±1.3)	8.0 (±1.0)	0.2 (±1.2)	0.1(±1.2)	61.8 (±1.2)	0.3 (±1.2)	0.9 (±1.1)	0.0 (±1.2)	0.4 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
85	160,182	113,433	95,395 (±2,724)	27.5 (±1.6)	14.2 (±1.5)	0.1 (±1.2)	0.0(±1.3)	52.5 (±1.1)	0.3 (±1.2)	5.0 (±1.3)	0.0 (±1.3)	0.1 (±1.2)	0.2 (±1.2)	0.1 (±1.2)
86	165,183	121,555	106,320 (±2,394)	16.5 (±1.0)	2.0 (±1.1)	0.1 (±1.3)	0.0(±1.4)	79.2 (±1.0)	0.5 (±1.1)	0.7 (±1.2)	0.1 (±1.3)	0.7 (±1.1)	0.0 (±1.3)	0.0 (±1.4)
87	174,343	125,360	110,500 (±2,516)	21.8 (±1.2)	7.5 (±1.3)	0.2 (±1.3)	0.2(±1.4)	67.3 (±0.8)	0.9 (±1.1)	1.3 (±1.2)	0.0 (±1.4)	0.7 (±1.2)	0.1 (±1.3)	0.0 (±1.4)
88	160,896	115,622	100,995 (±2,527)	29.4 (±1.1)	4.6 (±1.4)	0.1 (±1.5)	0.0(±1.6)	64.1 (±0.6)	0.5 (±1.4)	0.3 (±1.4)	0.1 (±1.5)	0.8 (±1.3)	0.0 (±1.6)	0.0 (±1.6)
89	172,138	118,380	84,010 (±2,169)	8.9 (±1.0)	7.9 (±1.1)	0.1 (±0.9)	0.1(±1.0)	76.3 (±1.1)	0.4 (±0.9)	5.2 (±0.8)	0.1 (±1.0)	0.7 (±0.9)	0.3 (±0.8)	0.0 (±1.0)
90	159,428	105,582	67,570 (±2,347)	49.7 (±2.0)	15.6 (±2.0)	0.0 (±2.3)	0.1(±2.3)	32.5 (±1.6)	0.3 (±2.3)	1.2 (±2.2)	0.1 (±2.4)	0.4 (±2.3)	0.0 (±2.4)	0.0 (±2.3)
91	162,838	119,048	102,550 (±2,493)	10.9 (±0.9)	4.2 (±1.0)	0.0 (±1.1)	0.0(±1.1)	79.6 (±1.2)	0.5 (±1.0)	3.4 (±0.9)	0.1 (±1.1)	0.9 (±1.0)	0.3 (±1.1)	0.1 (±1.1)
92	162,326	126,290	113,260 (±2,541)	9.6 (±0.9)	8.7 (±1.1)	0.1 (±1.1)	0.1(±1.1)	75.9 (±1.0)	0.2 (±1.1)	3.7 (±0.9)	0.7 (±1.1)	0.5 (±1.0)	0.4 (±1.0)	0.1 (±1.1)
93	162,161	113,584	86,295 (±2,066)	14.8 (±1.2)	12.1 (±1.2)	0.1 (±1.1)	0.2(±1.1)	66.5 (±1.0)	0.7 (±1.0)	4.8 (±0.9)	0.2 (±1.1)	0.4 (±1.0)	0.2 (±1.0)	0.1 (±1.1)
94	167,374	125,516	114,385 (±2,485)	10.2 (±1.0)	11.1 (±1.1)	0.1 (±1.1)	0.1(±1.1)	72.9 (±0.9)	0.6 (±0.9)	3.9 (±0.9)	0.0 (±1.1)	0.8 (±0.9)	0.2 (±1.0)	0.1 (±1.1)
95	161,634	115,752	95,555 (±2,490)	12.9 (±1.1)	49.8 (±1.5)	0.1 (±1.5)	0.2(±1.5)	34.7 (±1.3)	0.4 (±1.4)	1.4 (±1.4)	0.0 (±1.5)	0.3 (±1.4)	0.1 (±1.5)	0.1 (±1.5)
96	164,930	113,924	85,405 (±1,942)	10.1 (±1.0)	16.8 (±1.2)	0.4 (±0.9)	0.1(±0.9)	68.4 (±1.2)	0.5 (±0.7)	2.6 (±0.8)	0.1 (±0.9)	0.7 (±0.7)	0.2 (±0.9)	0.1 (±0.9)
97	168,901	131,335	118,065 (±2,439)	9.8 (±1.0)	10.2 (±1.1)	0.1 (±1.2)	0.0(±1.2)	77.2 (±0.9)	0.3 (±1.0)	1.9 (±0.9)	0.0 (±1.2)	0.2 (±1.1)	0.2 (±1.1)	0.1 (±1.1)
98	164,081	114,953	102,560 (±2,041)	6.7 (±0.9)	2.7 (±0.8)	0.1 (±0.9)	0.0(±0.9)	86.0 (±0.6)	0.4 (±0.9)	3.0 (±0.7)	0.0 (±0.9)	0.5 (±0.8)	0.3 (±0.9)	0.1 (±0.9)
99	170,697	125,780	102,560 (±2,935)	14.2 (±1.2)	6.2 (±1.2)	0.0 (±1.3)	0.0(±1.3)	76.7 (±1.0)	0.7 (±1.1)	1.6 (±1.2)	0.0 (±1.3)	0.4 (±1.2)	0.2 (±1.2)	0.1 (±1.3)
100	151,143	117,479	97,560 (±3,156)	18.3 (±1.4)	45.6 (±1.4)	0.1 (±1.5)	0.2(±1.5)	33.5 (±1.8)	0.2 (±1.5)	1.1 (±1.4)	0.0 (±1.6)	0.5 (±1.5)	0.1 (±1.5)	0.3 (±1.5)
101	164,664	110,209	74,855 (±2,242)	19.7 (±1.6)	28.0 (±1.8)	0.3 (±1.3)	0.2(±1.3)	42.9 (±1.5)	0.4 (±1.2)	7.8 (±1.1)	0.0 (±1.3)	0.4 (±1.2)	0.2 (±1.2)	0.1 (±1.3)
102	161,136	122,520	98,120 (±2,359)	11.3 (±1.2)	12.7 (±1.3)	0.0 (±1.4)	0.1(±1.4)	68.9 (±1.0)	0.4 (±1.2)	5.9 (±1.2)	0.0 (±1.4)	0.4 (±1.3)	0.1 (±1.4)	0.0 (±1.4)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black.

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH283

Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error

District	2010 Census Total	2010 Census VAP	Hispanic CVAP	Hispanic CVAP % Hispanic	Not Hispanic or Latino Citizen Voting Age Population (CVAP) % Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	% Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
103	176,016	123,719	69,725 (±2,363)	44.6 (±2.1)	13.8 (±1.9)	0.0 (±2.1)	0.4(±2.1)	36.8 (±1.4)	0.3 (±2.0)	2.7 (±1.8)	0.2 (±2.1)	0.7 (±2.0)	0.2 (±2.1)	0.1 (±2.1)
104	172,784	115,035	76,975 (±2,403)	51.7 (±2.0)	15.9 (±1.6)	0.0 (±1.8)	0.1(±1.8)	29.2 (±1.5)	0.4 (±1.7)	1.7 (±1.7)	0.4 (±1.8)	0.3 (±1.7)	0.1 (±1.8)	0.1 (±1.8)
105	175,728	127,590	91,315 (±2,401)	24.1 (±1.5)	11.1 (±1.3)	0.1 (±1.6)	0.1(±1.6)	59.3 (±1.2)	0.5 (±1.4)	4.2 (±1.2)	0.1 (±1.6)	0.5 (±1.4)	0.1 (±1.5)	0.0 (±1.6)
106	161,947	110,568	74,515 (±2,180)	8.8 (±1.1)	6.5 (±1.2)	0.2 (±0.8)	0.2(±0.8)	80.1 (±1.3)	0.3 (±0.7)	2.7 (±0.7)	0.1 (±0.9)	0.7 (±0.6)	0.2 (±0.8)	0.2 (±0.8)
107	171,872	123,986	102,435 (±2,746)	15.6 (±1.3)	14.0 (±1.4)	0.3 (±1.4)	0.1(±1.4)	66.0 (±1.2)	0.3 (±1.3)	2.9 (±1.2)	0.0 (±1.4)	0.6 (±1.2)	0.2 (±1.4)	0.0 (±1.4)
108	163,233	133,667	116,660 (±2,584)	13.6 (±1.2)	5.8 (±1.2)	0.1 (±1.4)	0.1(±1.4)	76.3 (±0.8)	0.4 (±1.3)	2.1 (±1.1)	0.2 (±1.4)	0.8 (±1.3)	0.3 (±1.3)	0.2 (±1.4)
109	174,176	122,353	104,735 (±2,742)	11.4 (±1.2)	56.6 (±1.6)	0.3 (±1.1)	0.2(±1.1)	29.7 (±1.3)	0.3 (±1.1)	1.0 (±1.1)	0.0 (±1.2)	0.3 (±1.1)	0.1 (±1.2)	0.1 (±1.2)
110	167,547	111,813	83,505 (±2,708)	24.9 (±2.0)	55.1 (±1.6)	0.1 (±1.7)	0.1(±1.7)	19.1 (±1.5)	0.2 (±1.6)	0.2 (±1.6)	0.0 (±1.7)	0.2 (±1.6)	0.0 (±1.7)	0.1 (±1.7)
111	166,979	118,406	98,255 (±2,741)	15.1 (±1.4)	53.9 (±1.6)	0.2 (±1.3)	0.3(±1.3)	28.0 (±1.2)	0.2 (±1.2)	1.5 (±1.1)	0.1 (±1.3)	0.3 (±1.2)	0.0 (±1.3)	0.4 (±1.2)
112	167,051	120,192	91,465 (±2,482)	14.8 (±1.4)	14.4 (±1.4)	0.1 (±1.3)	0.6(±1.3)	59.5 (±1.1)	0.4 (±1.2)	8.5 (±1.3)	0.0 (±1.4)	1.1 (±1.2)	0.2 (±1.3)	0.4 (±1.3)
113	171,410	120,829	94,835 (±2,391)	15.3 (±1.3)	17.6 (±1.3)	0.0 (±1.1)	0.3(±1.1)	60.1 (±1.3)	0.3 (±1.0)	5.4 (±1.0)	0.0 (±1.1)	0.5 (±0.9)	0.2 (±1.0)	0.2 (±1.1)
114	172,330	130,817	115,205 (±2,595)	11.0 (±1.1)	16.6 (±1.4)	0.1 (±1.3)	0.0(±1.3)	69.9 (±0.6)	0.2 (±1.2)	1.8 (±1.1)	0.0 (±1.3)	0.2 (±1.2)	0.1 (±1.3)	0.0 (±1.3)
115	166,734	125,470	94,730 (±2,216)	14.9 (±1.2)	10.6 (±1.2)	0.2 (±1.3)	0.1(±1.3)	64.3 (±1.0)	0.6 (±1.2)	8.6 (±1.1)	0.1 (±1.4)	0.3 (±1.2)	0.3 (±1.3)	0.1 (±1.3)
116	171,463	132,823	113,950 (±2,731)	57.1 (±1.5)	4.8 (±1.0)	0.1 (±1.1)	0.0(±1.1)	35.0 (±1.2)	0.4 (±1.1)	1.8 (±1.0)	0.0 (±1.1)	0.3 (±1.1)	0.1 (±1.1)	0.2 (±1.1)
117	171,249	116,261	71,395 (±2,128)	63.8 (±2.1)	4.6 (±1.1)	0.1 (±1.2)	0.0(±1.2)	29.4 (±1.2)	0.4 (±1.1)	1.1 (±1.1)	0.0 (±1.2)	0.3 (±1.1)	0.3 (±1.2)	0.0 (±1.2)
118	161,851	117,706	97,635 (±3,513)	64.7 (±1.7)	3.5 (±1.3)	0.2 (±1.3)	0.0(±1.3)	30.3 (±1.7)	0.2 (±1.3)	0.6 (±1.3)	0.1 (±1.3)	0.2 (±1.3)	0.1 (±1.3)	0.0 (±1.4)
119	159,981	114,477	103,575 (±2,969)	58.3 (±1.6)	8.2 (±1.2)	0.4 (±1.3)	0.1(±1.3)	30.7 (±1.1)	0.2 (±1.3)	1.2 (±1.2)	0.2 (±1.3)	0.3 (±1.3)	0.1 (±1.3)	0.3 (±1.3)
120	175,132	124,829	97,475 (±2,718)	34.1 (±1.5)	28.0 (±1.4)	0.2 (±1.4)	0.2(±1.4)	34.0 (±1.5)	0.3 (±1.4)	2.1 (±1.2)	0.2 (±1.5)	0.3 (±1.4)	0.6 (±1.4)	0.1 (±1.4)
121	174,867	133,224	117,915 (±2,606)	26.7 (±1.3)	4.9 (±1.0)	0.1 (±1.1)	0.0(±1.1)	65.2 (±1.0)	0.3 (±1.1)	1.4 (±0.9)	0.2 (±1.1)	0.5 (±1.0)	0.4 (±1.0)	0.1 (±1.1)
122	175,184	128,725	104,985 (±2,118)	23.4 (±1.3)	3.2 (±0.7)	0.0 (±0.8)	0.0(±0.8)	69.0 (±0.8)	0.2 (±0.7)	3.0 (±0.6)	0.0 (±0.8)	0.5 (±0.7)	0.2 (±0.7)	0.3 (±0.7)
123	175,674	135,763	116,365 (±3,176)	62.3 (±1.6)	4.1 (±1.3)	0.1 (±1.4)	0.0(±1.4)	31.7 (±1.2)	0.6 (±1.4)	0.6 (±1.3)	0.0 (±1.4)	0.3 (±1.4)	0.1 (±1.4)	0.0 (±1.4)
124	174,823	120,521	103,955 (±2,639)	62.4 (±1.6)	8.8 (±1.0)	0.3 (±0.9)	0.1(±1.0)	25.2 (±1.1)	0.8 (±0.9)	1.6 (±0.8)	0.1 (±1.0)	0.2 (±0.9)	0.3 (±0.9)	0.1 (±0.9)
125	174,549	125,158	104,260 (±3,886)	64.3 (±1.2)	5.2 (±1.2)	0.1 (±1.2)	0.1(±1.2)	28.2 (±2.0)	0.2 (±1.2)	1.3 (±1.1)	0.2 (±1.3)	0.2 (±1.2)	0.2 (±1.2)	0.1 (±1.2)
126	169,256	123,014	90,965 (±2,409)	17.0 (±1.3)	13.4 (±1.2)	0.1 (±1.1)	0.0(±1.1)	61.2 (±1.2)	0.2 (±1.0)	7.3 (±0.9)	0.1 (±1.1)	0.4 (±1.0)	0.3 (±1.0)	0.0 (±1.1)
127	163,983	115,865	105,020 (±2,376)	12.4 (±1.1)	10.3 (±1.2)	0.0 (±0.8)	0.1(±0.8)	73.9 (±1.1)	0.4 (±0.8)	2.1 (±0.7)	0.3 (±0.8)	0.3 (±0.7)	0.2 (±0.8)	0.2 (±0.8)
128	168,551	120,481	101,615 (±2,510)	19.4 (±1.2)	10.1 (±1.3)	0.1 (±1.3)	0.0(±1.3)	68.3 (±1.1)	0.4 (±1.2)	1.0 (±1.2)	0.0 (±1.3)	0.5 (±1.2)	0.1 (±1.3)	0.1 (±1.3)
129	171,751	128,953	115,970 (±2,628)	14.7 (±1.1)	8.4 (±0.9)	0.1 (±0.9)	0.0(±0.9)	68.0 (±1.1)	0.3 (±0.8)	7.5 (±0.8)	0.2 (±1.0)	0.4 (±0.8)	0.3 (±0.9)	0.2 (±0.9)
130	175,532	122,108	93,180 (±2,140)	11.6 (±1.0)	6.6 (±1.0)	0.0 (±0.9)	0.1(±0.9)	77.2 (±1.0)	0.2 (±0.8)	3.6 (±0.8)	0.0 (±0.9)	0.5 (±0.7)	0.0 (±0.8)	0.1 (±0.8)
131	175,227	121,368	83,715 (±2,656)	24.0 (±1.8)	53.2 (±1.8)	0.2 (±1.3)	0.0(±1.3)	16.1 (±1.1)	0.2 (±1.3)	5.9 (±1.3)	0.0 (±1.3)	0.1 (±1.3)	0.0 (±1.3)	0.2 (±1.3)
132	172,973	117,666	79,145 (±1,940)	20.6 (±1.5)	11.8 (±1.1)	0.2 (±0.9)	0.0(±0.9)	61.8 (±1.2)	0.3 (±0.8)	4.7 (±0.8)	0.0 (±0.9)	0.3 (±0.8)	0.2 (±0.9)	0.0 (±0.9)
133	173,041	128,877	99,535 (±3,039)	12.5 (±1.1)	16.4 (±1.4)	0.2 (±1.0)	0.1(±1.0)	58.9 (±1.7)	0.2 (±1.0)	11.1 (±1.0)	0.0 (±1.1)	0.1 (±1.0)	0.2 (±0.9)	0.1 (±1.0)
134	174,421	143,575	130,995 (±3,018)	11.0 (±0.9)	4.2 (±1.0)	0.1 (±1.1)	0.0(±1.1)	78.3 (±0.8)	0.2 (±1.1)	5.8 (±0.8)	0.0 (±1.1)	0.2 (±1.1)	0.2 (±1.1)	0.1 (±1.1)
135	172,422	121,136	85,790 (±2,114)	18.2 (±1.4)	12.9 (±1.2)	0.1 (±0.8)	0.0(±0.8)	59.0 (±1.4)	0.4 (±0.7)	8.8 (±0.9)	0.1 (±0.8)	0.3 (±0.7)	0.2 (±0.7)	0.1 (±0.8)
136	166,543	133,773	105,570 (±2,561)	12.0 (±1.1)	17.1 (±1.4)	0.1 (±1.1)	0.0(±1.1)	64.2 (±1.0)	0.4 (±1.0)	5.5 (±0.8)	0.1 (±1.1)	0.4 (±1.0)	0.1 (±1.0)	0.0 (±1.1)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
HOUSE DISTRICTS - PLANH283

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
137	173,598	122,142	63,545 (±2,434)	26.3 (±2.0)	28.9 (±2.1)	0.1 (±1.6)	0.0(±1.6)	26.8 (±1.6)	0.2 (±1.5)	17.1 (±1.6)	0.0 (±1.6)	0.4 (±1.5)	0.2 (±1.6)	0.0 (±1.6)
138	173,059	124,435	85,070 (±2,571)	22.3 (±1.4)	11.4 (±1.3)	0.1 (±1.1)	0.1(±1.1)	57.7 (±1.3)	0.3 (±1.1)	7.5 (±1.0)	0.0 (±1.1)	0.4 (±1.0)	0.2 (±1.0)	0.1 (±1.1)
139	175,733	123,875	96,265 (±2,752)	19.0 (±1.4)	50.0 (±1.6)	0.2 (±1.1)	0.0(±1.2)	26.1 (±1.2)	0.2 (±1.1)	4.1 (±1.1)	0.0 (±1.2)	0.1 (±1.1)	0.1 (±1.2)	0.0 (±1.2)
140	170,732	112,332	62,670 (±2,370)	58.5 (±2.3)	15.0 (±1.8)	0.0 (±1.8)	0.0(±1.8)	22.7 (±1.5)	0.1 (±1.8)	3.6 (±1.7)	0.0 (±1.8)	0.1 (±1.8)	0.0 (±1.8)	0.0 (±1.8)
141	166,498	113,951	81,790 (±2,991)	18.2 (±1.2)	61.9 (±1.5)	0.3 (±1.3)	0.1(±1.3)	17.6 (±1.6)	0.2 (±1.3)	1.2 (±1.2)	0.2 (±1.3)	0.1 (±1.3)	0.1 (±1.3)	0.2 (±1.3)
142	159,541	113,288	78,020 (±2,441)	21.3 (±1.5)	55.9 (±1.9)	0.1 (±1.5)	0.0(±1.5)	21.0 (±1.6)	0.2 (±1.4)	1.3 (±1.4)	0.0 (±1.5)	0.1 (±1.5)	0.1 (±1.5)	0.0 (±1.5)
143	162,482	109,560	75,260 (±2,590)	57.0 (±2.0)	15.0 (±1.9)	0.0 (±1.7)	0.0(±1.7)	26.2 (±1.6)	0.7 (±1.6)	0.9 (±1.5)	0.0 (±1.7)	0.3 (±1.6)	0.0 (±1.7)	0.0 (±1.7)
144	161,878	112,596	85,235 (±2,367)	31.2 (±1.5)	5.7 (±1.2)	0.0 (±1.3)	0.0(±1.3)	59.5 (±1.6)	0.4 (±1.2)	2.6 (±1.2)	0.1 (±1.3)	0.5 (±1.2)	0.1 (±1.3)	0.1 (±1.3)
145	170,821	121,835	85,295 (±2,585)	56.2 (±1.7)	6.8 (±1.4)	0.1 (±1.6)	0.0(±1.6)	33.8 (±1.5)	0.2 (±1.5)	2.2 (±1.4)	0.1 (±1.6)	0.5 (±1.5)	0.1 (±1.5)	0.1 (±1.5)
146	174,485	130,444	100,285 (±2,916)	11.2 (±1.2)	54.0 (±1.6)	0.1 (±1.3)	0.2(±1.3)	28.2 (±1.4)	0.1 (±1.3)	5.8 (±1.1)	0.1 (±1.3)	0.1 (±1.3)	0.1 (±1.3)	0.0 (±1.3)
147	175,873	136,034	108,940 (±4,319)	18.4 (±1.2)	47.4 (±1.4)	0.0 (±1.2)	0.1(±1.2)	30.2 (±1.6)	0.1 (±1.2)	3.3 (±1.1)	0.1 (±1.3)	0.2 (±1.2)	0.1 (±1.2)	0.0 (±1.3)
148	175,324	126,854	86,715 (±2,739)	51.4 (±2.0)	9.4 (±1.5)	0.1 (±1.6)	0.1(±1.6)	37.0 (±1.3)	0.3 (±1.5)	1.2 (±1.4)	0.1 (±1.6)	0.4 (±1.5)	0.1 (±1.6)	0.1 (±1.6)
149	164,376	116,361	98,445 (±2,528)	12.9 (±1.1)	4.4 (±0.8)	0.0 (±0.8)	0.1(±0.8)	77.4 (±1.2)	0.4 (±0.7)	3.8 (±0.7)	0.1 (±0.8)	0.5 (±0.8)	0.3 (±0.7)	0.1 (±0.8)
150	168,735	120,462	91,935 (±2,297)	12.3 (±1.0)	12.4 (±1.2)	0.1 (±0.9)	0.1(±1.0)	70.4 (±1.1)	0.2 (±0.9)	3.4 (±0.8)	0.4 (±1.0)	0.3 (±0.9)	0.2 (±0.9)	0.1 (±1.0)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
SENATE DISTRICTS - PLANS164

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error											
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)									
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
1	819,976	616,458	557,525 (±6,784)	4.3 (±0.4)	17.7 (±0.6)	0.2 (±0.6)	0.1(±0.6)	76.0 (±0.4)	0.5 (±0.5)	0.4 (±0.5)	0.1 (±0.6)	0.5 (±0.5)	0.1 (±0.6)	0.1 (±0.6)
2	808,524	582,997	493,000 (±5,744)	11.9 (±0.5)	12.0 (±0.5)	0.1 (±0.6)	0.1(±0.6)	73.0 (±0.5)	0.4 (±0.5)	1.6 (±0.5)	0.1 (±0.6)	0.6 (±0.5)	0.1 (±0.6)	0.1 (±0.6)
3	843,567	641,369	588,210 (±6,683)	5.3 (±0.4)	13.1 (±0.5)	0.1 (±0.5)	0.1(±0.5)	80.1 (±0.4)	0.4 (±0.5)	0.3 (±0.5)	0.1 (±0.5)	0.5 (±0.4)	0.1 (±0.5)	0.0 (±0.5)
4	815,995	597,765	506,235 (±6,007)	8.6 (±0.4)	15.2 (±0.7)	0.1 (±0.5)	0.0(±0.5)	73.7 (±0.4)	0.3 (±0.5)	1.4 (±0.4)	0.0 (±0.5)	0.5 (±0.5)	0.1 (±0.5)	0.1 (±0.5)
5	827,039	620,718	514,350 (±6,829)	13.0 (±0.5)	10.8 (±0.5)	0.1 (±0.5)	0.1(±0.5)	73.1 (±0.5)	0.3 (±0.4)	1.8 (±0.4)	0.0 (±0.5)	0.4 (±0.4)	0.2 (±0.5)	0.1 (±0.5)
6	812,881	551,137	368,950 (±5,840)	53.0 (±0.9)	16.7 (±0.8)	0.1 (±0.7)	0.0(±0.7)	27.3 (±0.7)	0.3 (±0.7)	2.1 (±0.7)	0.0 (±0.7)	0.3 (±0.7)	0.0 (±0.7)	0.1 (±0.7)
7	809,277	572,446	435,445 (±4,903)	14.9 (±0.5)	11.0 (±0.6)	0.1 (±0.4)	0.1(±0.4)	67.7 (±0.5)	0.3 (±0.4)	5.2 (±0.4)	0.1 (±0.4)	0.3 (±0.4)	0.2 (±0.4)	0.1 (±0.4)
8	794,900	572,635	476,975 (±4,991)	8.5 (±0.5)	8.8 (±0.5)	0.1 (±0.5)	0.1(±0.5)	73.9 (±0.5)	0.5 (±0.4)	7.2 (±0.4)	0.1 (±0.5)	0.4 (±0.4)	0.3 (±0.5)	0.1 (±0.5)
9	815,424	582,760	460,225 (±5,246)	17.1 (±0.6)	12.7 (±0.6)	0.1 (±0.6)	0.1(±0.6)	64.0 (±0.5)	0.4 (±0.5)	4.3 (±0.5)	0.3 (±0.6)	0.6 (±0.5)	0.2 (±0.6)	0.1 (±0.6)
10	834,267	602,461	500,380 (±5,254)	15.1 (±0.5)	18.3 (±0.6)	0.1 (±0.6)	0.1(±0.6)	62.7 (±0.5)	0.4 (±0.5)	2.6 (±0.5)	0.1 (±0.6)	0.4 (±0.5)	0.1 (±0.6)	0.1 (±0.6)
11	791,770	582,677	506,755 (±5,517)	16.6 (±0.5)	10.8 (±0.5)	0.1 (±0.5)	0.0(±0.5)	67.5 (±0.5)	0.3 (±0.5)	3.9 (±0.5)	0.1 (±0.5)	0.4 (±0.5)	0.2 (±0.5)	0.1 (±0.5)
12	814,103	582,410	480,860 (±5,742)	10.6 (±0.5)	7.1 (±0.5)	0.1 (±0.4)	0.1(±0.4)	77.2 (±0.5)	0.5 (±0.4)	3.3 (±0.4)	0.1 (±0.4)	0.7 (±0.4)	0.3 (±0.4)	0.1 (±0.4)
13	808,680	590,736	416,360 (±6,798)	16.1 (±0.7)	57.6 (±0.7)	0.1 (±0.6)	0.1(±0.6)	19.5 (±0.7)	0.2 (±0.6)	6.0 (±0.6)	0.1 (±0.6)	0.2 (±0.6)	0.1 (±0.6)	0.1 (±0.6)
14	834,750	640,349	523,010 (±6,717)	17.9 (±0.6)	9.6 (±0.5)	0.2 (±0.5)	0.1(±0.5)	67.4 (±0.5)	0.3 (±0.5)	3.7 (±0.4)	0.0 (±0.5)	0.5 (±0.5)	0.3 (±0.5)	0.1 (±0.5)
15	793,108	574,255	428,365 (±5,737)	22.2 (±0.7)	25.9 (±0.7)	0.1 (±0.5)	0.0(±0.6)	46.7 (±0.7)	0.3 (±0.5)	4.1 (±0.5)	0.2 (±0.6)	0.2 (±0.5)	0.1 (±0.5)	0.1 (±0.6)
16	816,670	614,614	486,655 (±5,425)	13.8 (±0.6)	11.2 (±0.6)	0.1 (±0.6)	0.2(±0.6)	68.6 (±0.4)	0.3 (±0.6)	5.0 (±0.5)	0.0 (±0.6)	0.5 (±0.6)	0.2 (±0.6)	0.1 (±0.6)
17	804,162	605,764	495,810 (±5,868)	13.2 (±0.5)	11.9 (±0.6)	0.1 (±0.5)	0.0(±0.5)	64.4 (±0.5)	0.3 (±0.5)	9.5 (±0.5)	0.0 (±0.5)	0.3 (±0.5)	0.2 (±0.5)	0.1 (±0.5)
18	809,726	587,890	475,120 (±5,630)	20.9 (±0.6)	11.9 (±0.6)	0.1 (±0.6)	0.0(±0.6)	63.1 (±0.5)	0.2 (±0.5)	3.3 (±0.6)	0.0 (±0.6)	0.4 (±0.5)	0.1 (±0.6)	0.1 (±0.6)
19	800,501	566,604	447,295 (±6,244)	59.1 (±0.8)	7.3 (±0.6)	0.1 (±0.6)	0.0(±0.6)	31.6 (±0.6)	0.3 (±0.6)	0.9 (±0.6)	0.0 (±0.6)	0.4 (±0.6)	0.2 (±0.6)	0.1 (±0.6)
20	833,339	577,960	434,520 (±6,063)	68.2 (±0.8)	2.5 (±0.6)	0.0 (±0.6)	0.0(±0.6)	27.8 (±0.6)	0.2 (±0.6)	0.8 (±0.5)	0.0 (±0.6)	0.3 (±0.6)	0.1 (±0.6)	0.0 (±0.6)
21	807,460	567,099	435,510 (±6,019)	59.8 (±0.7)	4.9 (±0.6)	0.1 (±0.6)	0.0(±0.6)	33.8 (±0.6)	0.3 (±0.5)	0.7 (±0.5)	0.0 (±0.6)	0.3 (±0.5)	0.1 (±0.6)	0.0 (±0.6)
22	830,951	614,234	556,305 (±5,988)	10.4 (±0.4)	8.7 (±0.5)	0.1 (±0.5)	0.0(±0.5)	79.0 (±0.4)	0.5 (±0.4)	0.6 (±0.5)	0.0 (±0.5)	0.4 (±0.4)	0.1 (±0.5)	0.1 (±0.5)
23	813,699	576,192	444,510 (±6,086)	24.0 (±0.7)	47.5 (±0.8)	0.2 (±0.7)	0.2(±0.7)	25.8 (±0.7)	0.3 (±0.7)	1.1 (±0.6)	0.1 (±0.7)	0.4 (±0.7)	0.1 (±0.7)	0.2 (±0.7)
24	798,189	596,939	532,450 (±6,204)	12.8 (±0.5)	10.4 (±0.6)	0.3 (±0.5)	0.0(±0.5)	73.4 (±0.4)	0.6 (±0.5)	1.3 (±0.4)	0.2 (±0.5)	0.5 (±0.5)	0.3 (±0.5)	0.2 (±0.5)
25	815,771	610,120	525,160 (±5,572)	22.9 (±0.6)	3.7 (±0.4)	0.1 (±0.4)	0.0(±0.4)	70.2 (±0.5)	0.4 (±0.4)	1.6 (±0.3)	0.1 (±0.4)	0.5 (±0.4)	0.2 (±0.4)	0.2 (±0.4)
26	802,046	589,522	499,425 (±6,723)	60.9 (±0.7)	6.9 (±0.6)	0.1 (±0.6)	0.1(±0.6)	29.4 (±0.7)	0.5 (±0.6)	1.3 (±0.5)	0.1 (±0.6)	0.2 (±0.6)	0.2 (±0.6)	0.1 (±0.6)
27	786,946	524,120	358,205 (±5,261)	79.8 (±0.7)	0.7 (±0.7)	0.0 (±0.7)	0.1(±0.7)	18.7 (±0.6)	0.2 (±0.7)	0.4 (±0.7)	0.0 (±0.7)	0.1 (±0.7)	0.0 (±0.7)	0.0 (±0.7)
28	778,341	586,992	531,960 (±5,853)	26.7 (±0.6)	6.0 (±0.5)	0.2 (±0.6)	0.0(±0.6)	65.5 (±0.4)	0.4 (±0.6)	0.5 (±0.6)	0.0 (±0.6)	0.5 (±0.6)	0.1 (±0.6)	0.1 (±0.6)
29	816,681	571,426	404,414 (±5,172)	74.5 (±0.6)	3.2 (±0.6)	0.1 (±0.7)	0.0(±0.7)	20.2 (±0.5)	0.4 (±0.6)	1.0 (±0.6)	0.1 (±0.7)	0.3 (±0.6)	0.1 (±0.6)	0.1 (±0.7)
30	813,218	605,241	520,075 (±5,977)	7.9 (±0.4)	5.8 (±0.5)	0.1 (±0.5)	0.1(±0.5)	83.4 (±0.4)	0.7 (±0.4)	0.9 (±0.5)	0.1 (±0.5)	0.8 (±0.4)	0.1 (±0.5)	0.1 (±0.5)
31	793,600	573,847	489,810 (±5,158)	25.1 (±0.6)	4.8 (±0.6)	0.1 (±0.7)	0.1(±0.7)	67.7 (±0.5)	0.5 (±0.6)	0.8 (±0.6)	0.1 (±0.7)	0.7 (±0.6)	0.0 (±0.7)	0.0 (±0.7)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

American Community Survey Special Tabulation
Using Census and American Community Survey Data
SENATE DISTRICTS - PLANS148

	2010 Census		Special Tabulation of Citizen Voting Age Population (CVAP) from the 2005-2009 American Community Survey with Margins of Error												
				Hispanic CVAP	Not Hispanic or Latino Citizen Voting Age Population (CVAP)										
District	Total	VAP	CVAP	% Hispanic	% Black Alone	% Black + White	% Black + American Indian	% White Alone	% American Indian Alone	%Asian Alone	% Native Hawaiian Alone	% American Indian + White	% Asian + White	% Remainder 2 or More Other
1	819,976	616,458	557,525 (±6,784)	4.3 (±0.4)	17.7 (±0.6)	0.2 (±0.6)	0.1(±0.6)	76.0 (±0.4)	0.5 (±0.5)	0.4 (±0.5)	0.1 (±0.6)	0.5 (±0.5)	0.1 (±0.6)	0.1 (±0.6)
2	808,524	582,997	493,000 (±5,744)	11.9 (±0.5)	12.0 (±0.5)	0.1 (±0.6)	0.1(±0.6)	73.0 (±0.5)	0.4 (±0.5)	1.6 (±0.5)	0.1 (±0.6)	0.6 (±0.5)	0.1 (±0.6)	0.1 (±0.6)
3	843,567	641,369	588,210 (±6,683)	5.3 (±0.4)	13.1 (±0.5)	0.1 (±0.5)	0.1(±0.5)	80.1 (±0.4)	0.4 (±0.5)	0.3 (±0.5)	0.1 (±0.5)	0.5 (±0.4)	0.1 (±0.5)	0.0 (±0.5)
4	815,995	597,765	506,235 (±6,007)	8.6 (±0.4)	15.2 (±0.7)	0.1 (±0.5)	0.0(±0.5)	73.7 (±0.4)	0.3 (±0.5)	1.4 (±0.4)	0.0 (±0.5)	0.5 (±0.5)	0.1 (±0.5)	0.1 (±0.5)
5	827,039	620,718	514,350 (±6,829)	13.0 (±0.5)	10.8 (±0.5)	0.1 (±0.5)	0.1(±0.5)	73.1 (±0.5)	0.3 (±0.4)	1.8 (±0.4)	0.0 (±0.5)	0.4 (±0.4)	0.2 (±0.5)	0.1 (±0.5)
6	812,881	551,137	368,950 (±5,840)	53.0 (±0.9)	16.7 (±0.8)	0.1 (±0.7)	0.0(±0.7)	27.3 (±0.7)	0.3 (±0.7)	2.1 (±0.7)	0.0 (±0.7)	0.3 (±0.7)	0.0 (±0.7)	0.1 (±0.7)
7	809,277	572,446	435,445 (±4,903)	14.9 (±0.5)	11.0 (±0.6)	0.1 (±0.4)	0.1(±0.4)	67.7 (±0.5)	0.3 (±0.4)	5.2 (±0.4)	0.1 (±0.4)	0.3 (±0.4)	0.2 (±0.4)	0.1 (±0.4)
8	794,900	572,635	476,975 (±4,991)	8.5 (±0.5)	8.8 (±0.5)	0.1 (±0.5)	0.1(±0.5)	73.9 (±0.5)	0.5 (±0.4)	7.2 (±0.4)	0.1 (±0.5)	0.4 (±0.4)	0.3 (±0.5)	0.1 (±0.5)
9	826,873	590,291	472,435 (±5,136)	15.8 (±0.6)	13.2 (±0.6)	0.2 (±0.6)	0.1(±0.6)	64.6 (±0.5)	0.5 (±0.5)	4.5 (±0.4)	0.3 (±0.6)	0.5 (±0.5)	0.2 (±0.5)	0.1 (±0.5)
10	836,379	608,919	510,000 (±5,611)	13.6 (±0.5)	12.8 (±0.6)	0.1 (±0.6)	0.1(±0.6)	69.5 (±0.5)	0.4 (±0.5)	2.7 (±0.5)	0.1 (±0.6)	0.5 (±0.5)	0.2 (±0.5)	0.1 (±0.5)
11	791,770	582,677	506,755 (±5,517)	16.6 (±0.5)	10.8 (±0.5)	0.1 (±0.5)	0.0(±0.5)	67.5 (±0.5)	0.3 (±0.5)	3.9 (±0.5)	0.1 (±0.5)	0.4 (±0.5)	0.2 (±0.5)	0.1 (±0.5)
12	796,410	565,144	451,575 (±5,630)	12.9 (±0.5)	6.6 (±0.5)	0.1 (±0.4)	0.1(±0.4)	75.5 (±0.5)	0.4 (±0.4)	3.3 (±0.4)	0.1 (±0.4)	0.7 (±0.4)	0.2 (±0.4)	0.1 (±0.4)
13	808,680	590,736	416,360 (±6,798)	16.1 (±0.7)	57.6 (±0.7)	0.1 (±0.6)	0.1(±0.6)	19.5 (±0.7)	0.2 (±0.6)	6.0 (±0.6)	0.1 (±0.6)	0.2 (±0.6)	0.1 (±0.6)	0.1 (±0.6)
14	834,750	640,349	523,010 (±6,717)	17.9 (±0.6)	9.6 (±0.5)	0.2 (±0.5)	0.1(±0.5)	67.4 (±0.5)	0.3 (±0.5)	3.7 (±0.4)	0.0 (±0.5)	0.5 (±0.5)	0.3 (±0.5)	0.1 (±0.5)
15	793,108	574,255	428,365 (±5,737)	22.2 (±0.7)	25.9 (±0.7)	0.1 (±0.5)	0.0(±0.6)	46.7 (±0.7)	0.3 (±0.5)	4.1 (±0.5)	0.2 (±0.6)	0.2 (±0.5)	0.1 (±0.5)	0.1 (±0.6)
16	816,670	614,614	486,655 (±5,425)	13.8 (±0.6)	11.2 (±0.6)	0.1 (±0.6)	0.2(±0.6)	68.6 (±0.4)	0.3 (±0.6)	5.0 (±0.5)	0.0 (±0.6)	0.5 (±0.6)	0.2 (±0.6)	0.1 (±0.6)
17	804,162	605,764	495,810 (±5,868)	13.2 (±0.5)	11.9 (±0.6)	0.1 (±0.5)	0.0(±0.5)	64.4 (±0.5)	0.3 (±0.5)	9.5 (±0.5)	0.0 (±0.5)	0.3 (±0.5)	0.2 (±0.5)	0.1 (±0.5)
18	809,726	587,890	475,120 (±5,630)	20.9 (±0.6)	11.9 (±0.6)	0.1 (±0.6)	0.0(±0.6)	63.1 (±0.5)	0.2 (±0.5)	3.3 (±0.6)	0.0 (±0.6)	0.4 (±0.5)	0.1 (±0.6)	0.1 (±0.6)
19	800,501	566,604	447,295 (±6,244)	59.1 (±0.8)	7.3 (±0.6)	0.1 (±0.6)	0.0(±0.6)	31.6 (±0.6)	0.3 (±0.6)	0.9 (±0.6)	0.0 (±0.6)	0.4 (±0.6)	0.2 (±0.6)	0.1 (±0.6)
20	833,339	577,960	434,520 (±6,063)	68.2 (±0.8)	2.5 (±0.6)	0.0 (±0.6)	0.0(±0.6)	27.8 (±0.6)	0.2 (±0.6)	0.8 (±0.5)	0.0 (±0.6)	0.3 (±0.6)	0.1 (±0.6)	0.0 (±0.6)
21	807,460	567,099	435,510 (±6,019)	59.8 (±0.7)	4.9 (±0.6)	0.1 (±0.6)	0.0(±0.6)	33.8 (±0.6)	0.3 (±0.5)	0.7 (±0.5)	0.0 (±0.6)	0.3 (±0.5)	0.1 (±0.6)	0.0 (±0.6)
22	818,727	599,278	529,280 (±5,778)	11.4 (±0.4)	14.3 (±0.5)	0.1 (±0.5)	0.0(±0.6)	72.4 (±0.5)	0.5 (±0.5)	0.7 (±0.5)	0.1 (±0.6)	0.4 (±0.5)	0.1 (±0.5)	0.1 (±0.6)
23	813,699	576,192	444,510 (±6,086)	24.0 (±0.7)	47.5 (±0.8)	0.2 (±0.7)	0.2(±0.7)	25.8 (±0.7)	0.3 (±0.7)	1.1 (±0.6)	0.1 (±0.7)	0.4 (±0.7)	0.1 (±0.7)	0.2 (±0.7)
24	798,189	596,939	532,450 (±6,204)	12.8 (±0.5)	10.4 (±0.6)	0.3 (±0.5)	0.0(±0.5)	73.4 (±0.4)	0.6 (±0.5)	1.3 (±0.4)	0.2 (±0.5)	0.5 (±0.5)	0.3 (±0.5)	0.2 (±0.5)
25	815,771	610,120	525,160 (±5,572)	22.9 (±0.6)	3.7 (±0.4)	0.1 (±0.4)	0.0(±0.4)	70.2 (±0.5)	0.4 (±0.4)	1.6 (±0.3)	0.1 (±0.4)	0.5 (±0.4)	0.2 (±0.4)	0.2 (±0.4)
26	802,046	589,522	499,425 (±6,723)	60.9 (±0.7)	6.9 (±0.6)	0.1 (±0.6)	0.1(±0.6)	29.4 (±0.7)	0.5 (±0.6)	1.3 (±0.5)	0.1 (±0.6)	0.2 (±0.6)	0.2 (±0.6)	0.1 (±0.6)
27	786,946	524,120	358,205 (±5,261)	79.8 (±0.7)	0.7 (±0.7)	0.0 (±0.7)	0.1(±0.7)	18.7 (±0.6)	0.2 (±0.7)	0.4 (±0.7)	0.0 (±0.7)	0.1 (±0.7)	0.0 (±0.7)	0.0 (±0.7)
28	778,341	586,992	531,960 (±5,853)	26.7 (±0.6)	6.0 (±0.5)	0.2 (±0.6)	0.0(±0.6)	65.5 (±0.4)	0.4 (±0.6)	0.5 (±0.6)	0.0 (±0.6)	0.5 (±0.6)	0.1 (±0.6)	0.1 (±0.6)
29	816,681	571,426	404,414 (±5,172)	74.5 (±0.6)	3.2 (±0.6)	0.1 (±0.7)	0.0(±0.7)	20.2 (±0.5)	0.4 (±0.6)	1.0 (±0.6)	0.1 (±0.7)	0.3 (±0.6)	0.1 (±0.6)	0.1 (±0.7)
30	829,574	623,474	554,555 (±6,060)	7.6 (±0.4)	5.3 (±0.5)	0.1 (±0.5)	0.1(±0.5)	84.5 (±0.3)	0.7 (±0.4)	0.7 (±0.5)	0.0 (±0.5)	0.8 (±0.4)	0.1 (±0.5)	0.1 (±0.5)
31	793,600	573,847	489,810 (±5,158)	25.1 (±0.6)	4.8 (±0.6)	0.1 (±0.7)	0.1(±0.7)	67.7 (±0.5)	0.5 (±0.6)	0.8 (±0.6)	0.1 (±0.7)	0.7 (±0.6)	0.0 (±0.7)	0.0 (±0.7)

The American Community Survey provided estimated citizen voting age population (CVAP) data at the block group level in a Special Tabulation. All block groups with more than 50% of the population in a district are included in the analysis.
The percent for each CVAP population category is that group's CVAP divided by the CVAP total.
Numbers in parentheses are margins of error at 90% confidence level.
Black = Non-Hispanic Black

AMICUS CURIAE BRIEF

Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

RICK PERRY, GOVERNOR OF TEXAS, *ET AL.*,
Appellants,

v.

SHANNON PEREZ, *ET AL.*, *Appellees,*

RICK PERRY, GOVERNOR OF TEXAS, *ET AL.*,
Appellants,

v.

WENDY DAVIS, *ET AL.*, *Appellees,*

RICK PERRY, GOVERNOR OF TEXAS, *ET AL.*,
Appellants,

v.

SHANNON PEREZ, *ET AL.*, *Appellees,*

On Appeal from the U.S. District Court for the Western District of Texas

BRIEF *AMICUS CURIAE* OF EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND, INC., IN SUPPORT OF APPELLANTS

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QUESTIONS PRESENTED

The Texas Legislature enacted new electoral maps for the Texas House, Texas Senate, and U.S. House of Representatives in light of population changes in the 2010 census. Texas is actively seeking judicial preclearance of those maps under Section 5 of the Voting Rights Act.

The question presented is whether, while preclearance remains pending, another district court may order the use of judicially drawn "interim" electoral maps that give no deference to the State's duly-enacted maps, are not premised on any actual or likely violation of law, and are based on nothing more than the court's own notion of sound public policy and "the collective public good."

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Nos. 11-713, 11-714, 11-715

In the Supreme Court of the United States

RICK PERRY, GOVERNOR OF TEXAS, *ET AL.*,
Appellants,

v.

SHANNON PEREZ, *ET AL.*, *Appellees,*

RICK PERRY, GOVERNOR OF TEXAS, *ET AL.*,
Appellants,

v.

WENDY DAVIS, *ET AL.*, *Appellees,*

RICK PERRY, GOVERNOR OF TEXAS, *ET AL.*,
Appellants,

v.

SHANNON PEREZ, *ET AL.*, *Appellees,*

On Appeal from the U.S. District Court for the Western District of Texas

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Eagle Forum Education & Legal Defense Fund, Inc. ("Eagle Forum")[1] is a nonprofit

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[1] *Amicus* Eagle Forum files this brief with the consent of all parties; Appellants' and Appellees' written letters of consent have been lodged with the Clerk of the Court. Pursuant to Rule 37.6, counsel for *amicus curiae* authored this brief in whole, no

(Footnote cont'd on next page)

corporation founded in 1981 and headquartered in Saint Louis, Missouri. For thirty years, Eagle Forum has consistently defended federalism and supported States' autonomy from federal intrusion in areas that are of traditionally State or local concern. Similarly, Eagle Forum has consistently argued for judicial restraint under both Article III and separation-of-powers principles. In addition, Eagle Forum has an active chapter in Texas, the members of which will be directly affected by the interim order entered in these consolidated actions by the United States District Court for the Western District of Texas ("Western District"). For all of the foregoing reasons, Eagle Forum has a direct and vital interest in the issues before this Court.

STATEMENT OF THE CASE

Since the 2010 census data became available earlier this year, the State of Texas has worked diligently, expeditiously, and cooperatively with stakeholders within Texas and with the Federal Government to prepare a new electoral map to reflect its adding four seats in the House of Representatives. Through no fault of Texas, the preclearance litigation over its electoral map has not progressed quickly enough to resolve the open

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(Footnote cont'd from previous page.)

counsel for a party authored this brief in whole or in part, and no person or entity – other than *amicus*, its members, and its counsel – contributed monetarily to the preparation or submission of this brief.

questions of Texas' compliance with the Voting Rights Act's criteria. Over a strong dissent by the one appellate judge on the three-judge panel, a majority of the panel in the Western District redrew the electoral map, without making any findings that the various plaintiffs (collectively, "Plaintiffs") likely would succeed on the merits of their constitutional and statutory challenges to the new Texas electoral map. *A fortiori,* the Western District did not narrowly tailor its remedial order to any perceived violations in Texas' map.

Constitutional Background

Article III, §2 confines federal courts to cases and controversies. U.S. CONST. art. III, §2. Federal appellate courts review jurisdictional issues *de novo, Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 94-95 (1998), and "presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record." *Renne v. Geary,* 501 U.S. 312, 316 (1991). Parties cannot confer jurisdiction by consent or waiver, *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 231 (1990), "[a]nd if the record discloses that the lower court was without jurisdiction [an appellate] court will notice the defect" and "the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co.,* 523 U.S. at 94 (interior quotations omitted).

Constitutional standing presents a tripartite test: cognizable injury to the plaintiffs, causation by the defendants, and redressable by a court. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561-62 (1992). Because it goes to the federal courts' Article III

power to hear a case, standing "is the threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin,* 422 U.S. 490, 499 (1975). Because Article III standing is jurisdictional. even preliminary injunctions require standing. *City of Los Angeles v. Lyons,* 461 U.S. 95, 103 (1983).

Under the Eleventh Amendment, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Sovereign immunity arises also from the Constitution's structure and antedates the Eleventh Amendment, *Alden v. Maine,* 527 U.S. 706, 728-29 (1999), applying equally to suits by a State's own citizens. *Hans v. Louisiana,* 134 U.S. 1 (1890). Officer suits for *prospective* injunctive relief against ongoing violations of federal law provide limited exceptions to sovereign immunity, *Ex parte Young,* 209 U.S. 123 (1908), which requires an *ongoing violation* of federal law to assert jurisdiction over a non-consenting State. *Green v. Mansour,* 474 U.S. 64, 66-67 (1985).

In the voting context, the Equal Protection Clause of the Fourteenth Amendment protects citizens from intentional race-based discrimination and also provides the "one-person, one-vote" principle that seeks to equalize the value of individual votes across voting districts. U.S. CONST. amend. XIV, §1, cl. 4; *Reynolds v. Sims,* 377 U.S. 533 (1964). In addition, the Fourteenth Amendment authorizes Congress to enforce the Fourteenth Amendment "by

appropriate legislation." U.S. CONST. amend. XIV, §5; *accord* U.S. CONST. amend. XV, §2.

Statutory Background

Congress first enacted the Voting Rights Act, 42 U.S.C. §§1973-1973q ("VRA"), in 1965, "to rid the country of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966). As relevant here, two VRA provisions are at issue.

First, VRA §2 applies nationwide to prohibit any "voting qualification or prerequisite to voting or standard, practice, or procedure ... [that] results in a denial or abridgment of the right ... to vote on account of race or color," 42 U.S.C. §1973(a), or membership in a "language minority group." 42 U.S.C. §1973b(f)(2). Under VRA §2, plaintiffs bear the burden of proof and affirmatively must make their case in order to enjoin a duly enacted law. 42 U.S.C. §1973a(c).

Second, VRA §5 requires "covered jurisdictions" to obtain preclearance – either administratively from the Department of Justice or in a declaratory judgment proceeding against the Attorney General before a three-judge panel in the United States District Court for the District of Columbia – before a duly enacted law that affects voting will take effect. U.S.C. §1973c(a). Unlike litigation under VRA §2, preclearance under VRA §5 depends on whether a change "neither has the purpose *nor will have the effect* of denying or abridging the right to vote on account of race or color," *id.* (emphasis added), or membership in a "language minority group." 42 U.S.C. §1973b(f)(2).

A final law covers permutations that arise "[u]ntil a State is redistricted in the manner provided by the law thereof after any apportionment." 2 U.S.C. §2a(c). Where "there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State." *Id.* §2a(c)(2). Under this law, each voting Texan would vote for one single-member district based on the electoral map from the 2000 census and four at-large districts until the courts resolve the Texas preclearance litigation over the 2010 census.[2] With exceptions not here relevant, however, a subsequently enacted statute provides that "there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative." 2 U.S.C. §2c. In *Branch*, a plurality of this Court found that this did not repeal §2a(c)(2) by implication.

SUMMARY OF ARGUMENT

In failing to recognize that its "interim order" is simply a preliminary injunction, the Western

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[2] The population changes between the 2000 census and the 2010 census may have put the districts based on the 2000 census in violation of the one-person, one-vote requirements. *Branch v. Smith*, 538 U.S. 254, 272 (2003) (plurality).

District failed to follow the substantive balancing (Section I.A) and jurisdictional analysis (Section I.B) required for preliminary injunctive relief. In particular, the Western District failed to balance and adequately accommodate Texas' interests (Section I.A). Apart from the criteria for injunctive relief generally, the Western District's approach also failed to consider the role of Texas as a dual sovereign in our federalist system (Section II). Given the lack of any finding of violation in Texas' map and the waning justification for the VRA's preclearance requirements, nothing prevents this Court's using Texas' new electoral map as the interim map, until the courts or parties resolve preclearance of the permanent revisions to Texas' electoral map (Section II.A). Finally, this Court should reject the Western District's efforts to cobble together minority coalition districts as unauthorized by either dilution generally or the VRA specifically (Section II.B).

ARGUMENT

I. THE WESTERN DISTRICT FAILED TO ESTABLISH JURISDICTION FOR, AND THE PLAINTIFFS' ENTITLEMENT TO, INTERIM RELIEF

In issuing its elective map for the entire State of Texas via an "interim order" untethered to standards for preliminary injunctive relief, the Western District exceeded its jurisdiction, both statutorily and constitutionally. First, by eschewing the criteria for preliminary injunctions, Western District exceeded its statutory equity jurisdiction. Second, by remedying even unchallenged legislative districts, the Western District exceeded Article III's confines

by going beyond the cases and controversies before that court.

A. The Western District Exceeded its Equity Jurisdiction and Abused its Discretion by Enjoining Texas without Meeting the Criteria for Interim Injunctive Relief

The Judiciary Act of 1789 gave the lower federal courts jurisdiction over "all suits ... in equity." Ch. 20, §11, 1 Stat. 72, 78 (1789). This jurisdictional grant conferred on the district courts "authority to administer ... the principles of the system of judicial remedies which had been devised and was being administered" by the English High Court of Chancery at the time of this country's founding. *Atlas Life Ins. Co. v. W.I. Southern, Inc.*, 306 U.S. 563, 568 (1939); *cf. Atlas Roofing Co., Inc. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 459 n.14 (1977) (Judiciary Act was "declaratory of *existing law*" of equity) (emphasis added). Moreover, as an "extraordinary" remedy, a preliminary injunction "is not a remedy which issues as of course." *Harrisonville v. W.S. Dickey Clay Mfg. Co.*, 289 U.S. 334, 337-38 (1933); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-13 (1982).

As Texas argues, there is no "interim relief" exception to the rules applicable to preliminary injunctions. Texas Br. at 38-44. Indeed, "interim relief" is *synonymous* with "preliminary injunction." *See, e.g., Sole v. Wyner*, 551 U.S. 74, 78 (2007); *Brown v. Chote*, 411 U.S. 452, 456-57 (1973). As such, in reviewing the Western District's interim

order, this Court must apply the traditional and familiar four criteria for preliminary injunctions:

> A plaintiff seeking a preliminary injunction *must* establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008) (emphasis added). Appellate courts review preliminary relief for abuse of discretion, but a "court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Here, the Western District's extraordinary relief is wholly unjustified under the four-part *Winters* test.

Although *Winters* is recent, its rule of law is not. At all times relevant to VRA's enactment, amendment, and reauthorization, this Court "has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies." *Romero-Barcelo,* 456 U.S. at 312 (collecting cases). Significantly, these principles "reflect a practice with a background of several hundred years of history, a practice of which Congress is assuredly well aware." *Romero-Barcelo,* 456 U.S. at 313 (interior quotations and citations omitted). Thus, although "Congress may intervene and guide or control the exercise of the courts' discretion," courts "do not lightly assume that Congress has intended to depart from

established principles." *Id.* Here, nothing indicates that the VRA departs from standard equity practice.

Of course, the Western District's most glaring error was its failure to assess the Plaintiffs' likelihood of success on the merits. But that was not the Western District's most consequential error, as this Court would review the likelihood-of-success finding *de novo* in any event. Two other errors bear particular mention because they go to federalism concerns and jurisdictional issues that this Court is bound to consider.

First, when the opposing parties put forward "competing claims of injury, the traditional function of equity has been to arrive at a nice adjustment and reconciliation between the competing claims." *Romero-Barcelo,* 456 U.S. at 312 (internal quotations omitted). Here, Texas has legitimate interests in its sovereignty and the political and policy compromises represented in its duly enacted electoral map. *Miller v. Johnson,* 515 U.S. 900, 915-16 (1995). For reasons such as these, equitable relief that affects competing public interests "has never been regarded as strictly a matter of right, even though irreparable injury may otherwise result to the plaintiff." *Yakus v. U.S.,* 321 U.S. 414, 440 (1944). Accordingly, the public interest component can deny a plaintiff relief that courts otherwise might provide:

> [W]here an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the

> parties, though the postponement may be burdensome to the plaintiff.

Id. For all these reasons, the Western District's effort to rewrite the entire State electoral map, even uncontested districts, falls particularly short of a "nice adjustment" between the parties' interests.

Under the VRA, "[a]ny aggrieved party may *as of right* intervene *at any stage* in [a preclearance] action." 42 U.S.C. §1973b(a)(4) (emphasis added). This generous intervention provision ensures that all of the Plaintiffs in these consolidated actions had the adequate alternate remedy of seeking to intervene in the preclearance proceeding in the United States District Court for the District of Columbia. Indeed, most of the Plaintiffs here have indeed intervened into the District of Columbia preclearance proceedings. Texas Br. at 11-12. To warrant equitable relief here, however, the Plaintiffs must lack an adequate remedy. *Romero-Barcelo*, 456 U.S. at 312. For those plaintiffs that have an adequate remedy in the District of Columbia proceedings that the VRA provides, the Western District should have stayed its hand. Even the Department of Justice holds to "the principle that section 5 review ordinarily should precede other forms of court review." Civil Rights Division, Department of Justice, Revision of Voting Rights Procedures, 76 Fed. Reg. 21,239 (2011). For the foregoing reasons, the consolidated Texas-based actions are premature.

B. The Plaintiffs Did Not Establish the Standing Necessary for the Injunctive Relief that the Western District Ordered

Plaintiffs must establish their standing to obtain a preliminary injunction, *Lyons*, 461 U.S. at 103, and they must do so for each claim raised and each form of relief requested: "standing is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 & n.5 (2006). The Western District did not make findings sufficient to meet the Plaintiffs' burden to establish standing.

At the outset, the Plaintiffs obviously failed to establish their entitlement to relief with respect to the electoral districts that the parties did not even contest. *See* Texas Br. at 19. While a two-district jurisdiction might necessarily involve changes to "District B" if a court found VRA violations in "District A," that is simply not the case with a State as large as Texas. Consequently, the Western District's rewrite of the entire Texas electoral map included many instances where that court lacked jurisdiction for the exercise. Contrary to the Western District's apparent view, Article III "courts are not roving commissions" out to maximize the collective public good:

> Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other

> situations not before the Court. ... These principles rest on more than the fussiness of judges. They reflect the conviction that under our constitutional system courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws. Constitutional judgments ... are justified only out of the necessity of adjudicating rights in particular cases between the litigants brought before the Court.

Broadrick v. Oklahoma, 413 U.S. 601, 610-11 (1973) (citations omitted). In going beyond the disputes before it, the Western District exceeded not only its jurisdiction but also its role.

But even the Western District's rewrite of allegedly problematic districts fails for lack of standing. To obtain equitable relief, a party must proceed beyond mere allegations to proof. *Summers v. Earth Island Institute*, 555 U.S. 488, 497-98 (2009). For reasons of its own, however, the Western District has assumed that the Plaintiffs' *allegations* of injury have merit and then prepared that court's own electoral map. Such assumptions, however, cannot support jurisdiction for a federal decree against *anyone*, much less a non-consenting State.

II. THE WESTERN DISTRICT'S APPLICATION OF THE VRA OFFENDS PRINCIPLES OF FEDERALISM

The Western District's rewrite of Texas' electoral map, without any finding of violation offends federalism, under which both State and Federal Governments are sovereign in their respective spheres:

> [F]ederalism was the unique contribution of the Framers to political science and political theory. Though on the surface the idea may seem counter-intuitive, it was the insight of the Framers that freedom was enhanced by the creation of two governments, not one.

U.S. v. Lopez, 514 U.S. 549, 576 (1995) (Kennedy, J., concurring). "The Framers adopted this constitutionally mandated balance of power to reduce the risk of tyranny and abuse from either front, because a federalist structure of joint sovereigns preserves to the people numerous advantages." *Wyeth v. Levine*, 555 U.S. 555, 584 (2009) (interior quotations and citations omitted) (Thomas, J., concurring). As Texas argues, Texas Br. at 48-49, the State was not recalcitrant in responding to the new census and seeking preclearance of the changes that those new data required. As such, Texas was entitled to the balancing that equity requires, *Romero-Barcelo*, 456 U.S. at 312; *Yakus*, 321 U.S. at 440, not the Western District's heavy-handed displacement of Texas' role in its own elections.

A. The Basis for Remedial Legislation in 1965 Cannot Justify Race-Conscious Remedies Indefinitely

The background against which Congress enacted the VRA in 1965 warranted remedial legislation. *South Carolina v. Katzenbach*, 383 U.S. 301, 312-13 (1966). On the other hand, this Court has not hesitated to reject efforts to abrogate sovereign immunity when the evidence of discrimination fell "stark[ly]" short of the "documented [and] marked pattern of unconstitutional action by the States" that

led to the VRA's enactment. *Board of Trustees of University of Alabama v. Garrett,* 531 U.S. 356, 358 (2001). As this Court recently recognized, racial voting disparities have decreased significantly in the VRA's covered jurisdictions, due in part to the VRA itself. *Northwest Austin Mun. Utility Dist. No. One v. Holder,* 129 S.Ct. 2504, 2511-12 (2009).

Because the VRA "imposes current burdens," however, it "must be justified by current needs." *Id.* Race-conscious programs must be "appropriately limited such that [they] will not last longer than the discriminatory effects [they are] designed to eliminate." *Adarand Constructors, Inc. v. Pena,* 515 U.S. 200, 237-38 (1995). Where such programs – or the passage of time – succeed in eradicating the evil that Congress sought to address, their very success can provide the rationale for their repeal. Samuel Issacharoff, *Is Section 5 of the Voting Rights Act a Victim of Its Own Success?* 104 COLUM. L. REV. 1710 (2004). Given the "substantial federalism costs" that the VRA's preclearance program imposes on sovereign States, *Northwest Austin,* 129 S.Ct. at 2511, this Court will be called upon to reassess VRA §5's ongoing constitutionality in an appropriate case.

Presently before this Court is a State's appeal of a preliminary injunction against a duly enacted electoral map, where the district court wholly failed to consider any of the substantive and jurisdictional elements that must underlie such injunctive relief. Due to that curious procedural posture, this case provides a stepping stone to the Court's eventual reconsideration of VRA §5. The State electoral map that has not been found discriminatory on the basis

of race or language, but the judicially drawn map is intentionally and expressly race conscious. Nothing in the record justifies choosing the judicial map over the State map on an interim basis. While preclearance remains required by VRA §5 for *permanent* use of Texas' new map, VRA's implementing regulations expressly contemplate "the emergency interim use without preclearance of a voting change." 28 C.F.R. §51.18(d). Under the circumstances, this Court should approve Texas' map on an *interim* basis.

B. The VRA Does Not Authorize the Western District's Attempts to Cobble Together Minority "Coalition Districts"

In overriding Texas' duly enacted electoral map, the Western District reduced the number of majority African-American Texas House districts from three to one, primarily to create additional "coalition districts" that combine significant populations of African-Americans, Latinos, and Asians into a district where they might have minority success as a coalition. *See* Texas Br. at 58-59. At the outset, the voting blocs that the Western District used to build its coalition districts were not, in themselves, "sufficiently large and geographically compact" and "politically cohesive" enough "to create a majority in a single-member district." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).[3] As such, each bloc's falling

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[3] The final *Gingles* factor is that the majority must vote "sufficiently as a bloc to enable it ... usually to

(Footnote cont'd on next page)

outside its own individual majority district does not constitute dilution.

The non-dilution is even more clear for the Western District's racially cobbled coalition districts: "Since a court may not presume bloc voting within even a single minority group, it made no sense for the District Court to (in effect) indulge that presumption as to bloc voting within an agglomeration of distinct minority groups." *Growe v.*

(Footnote cont'd from previous page.)

defeat the minority's preferred candidate." *Id.* "[I]n the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." *Gingles,* 478 U.S., at 49, n.15. While not directly relevant to Texas, it is significant that the Nation elected an African-American President in 2008 and that several VRA-covered jurisdictions elected Latinos to major statewide offices such as U.S. Senator and Governor in 2010. Because the Western District's minority-coalition districts fail the other *Gingles* factors, it is perhaps irrelevant whether the Plaintiffs could prove that majority-bloc voting justifies relief under the final *Gingles* factor. *Cf. Bartlett v. Strickland,* 129 S.Ct. 1231, 1244 (2009) (expressing skepticism that the majority-bloc voting test could be met for a minority crossover district). Nonetheless, *amicus* Eagle Forum respectfully submits that recent national experience shows that the Plaintiffs likely cannot make the required proof.

Emison, 507 U.S. 25, 41 (1993). Indeed, as Texas points out, the Plaintiffs' evidence is precisely to the contrary with respect to the Western District's coalitions. Texas Br. at 58-59 & nn.11, 12. Without meeting *Gingles*, "there neither has been a wrong nor can be a remedy." *Growe*, 507 U.S. at 41. So, even assuming *arguendo* that VRA entitled minority blocs generally to coalition districts, *these* Plaintiffs could not establish *their* entitlement to *these* districts.

Although it has not addressed such coalition districts under the VRA, this Court in *Bartlett* held that the VRA does not require the creation of "crossover districts," which are districts in which a minority bloc "make[s] up less than a majority of the voting-age population" but "at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Bartlett*, 129 S.Ct. at 1242-43. Because the VRA neither "grants special protection to a minority group's right to form political coalitions" nor "immune[izes them] from the obligation to pull, haul, and trade to find common political ground," *Bartlett*, 129 S.Ct. at 1243 (interior quotations and citations omitted), this Court rejected crossover districts as a VRA remedy. The same rationales that led this Court to reject crossover districts in *Bartlett* lead to rejecting coalition districts here. *Bartlett*, 129 S.Ct. at 1243 (Kennedy, J.); *id.* at 1250 (Thomas, J., concurring in the judgment). Because the Western District's solution "bears an uncomfortable resemblance to political apartheid," *Shaw v. Reno*, 509 U.S. 630, 647 (1993),

and is not required by the VRA, this Court should reject it as interim relief.

CONCLUSION

For the foregoing reasons and those argued by Texas, this Court should vacate the Western District's interim order and enter an order establishing a legislative map for the 2012 elections.

December 28, 2011

Respectfully submitted,

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